

Opt-in to Proposals which recommend Council Decisions for the conclusion and signing of an Agreement between Canada and the EU on the transfer of Passenger Name Record (PNR) data

1. Information Note

Com (2024) 94

A. Proposal

Proposal for a Council decision on the signing, on behalf of the European Union, of an agreement between Canada and the European Union on the transfer and processing of Passenger Name Record (PNR) data

Com (2024) 95

B. Proposal

Proposal for a Council decision on the conclusion, on behalf of the European Union, of an agreement between Canada and the European Union on the transfer and processing of Passenger Name Record (PNR) data

2. Date of Commission documents

06/03/2024

3. Number of Commission documents

COM (2024)94

COM (2024)95

COM (2024) 95 ANNEX (Text of agreement)

4. Number of Council document:

Council Draft Decision documents -

2024/0050 - on the signing of the agreement

2024/0051 – on the conclusion of the agreement

5. Dealt with in Brussels by

Working Party on Information Exchange and Information Management (IXIM)

6. Department with primary responsibility

Department of Justice

7. Other Departments involved

An Garda Síochána

8. Background to, Short summary and aim of the proposal

The European Commission is proposing Council decisions to approve both the conclusion and signing of an agreement with Canada in the area of transfer and use of Passenger Name Record (PNR) data.

This agreement sets out the conditions for the transfer PNR data, for air travel, from the European Union to a third country, and the use of that data to ensure the security and safety of the public. The agreement also covers the means by which the data is protected.

There are currently three international agreements in force between the EU and third countries namely Australia, the United States (2012) and the United Kingdom (2020), which cover the transfer and processing of PNR data. In February 2024, Ireland opted-in to proposed decisions to authorise the opening of EU negotiations with Norway, Iceland and Switzerland regarding the transfer of PNR data.

Passenger name record (PNR) data is information provided by passengers, and collected by and held in the air carriers' reservation and departure control systems for their own commercial purposes. The content of PNR data varies depending on the information given during the booking and check-in process and may include, for example, dates of travel and the complete travel itinerary of the passenger or group of passengers travelling together.

The collection and analysis of PNR data can provide the relevant authorities with important elements allowing them to detect suspicious travel patterns and identify criminals and terrorists, and their associates.

Accordingly, the processing of PNR data has become a widely used law enforcement tool, in the EU and beyond, to detect terrorism and other forms of serious crime. While crucial for combating terrorism and serious crime, the transfer of PNR data to third countries as well as the processing by their authorities constitutes an interference with the protection of individuals' rights with regard to their personal data.

For this reason, it requires a legal basis under EU law and must be necessary, proportionate and subject to strict limitations and effective safeguards, as guaranteed by the Charter of Fundamental Rights of the EU. This agreement between the EU and Canada covers the means by which the PNR data is protected.

The proposed decisions to conclude and sign this agreement have a Title V legal basis, and Protocol 21 is therefore engaged in terms of Ireland. In operational and policy terms it is considered desirable that Ireland avail of an article 3 opt-in to the concluding of this process so that post agreement, Ireland could also participate in the agreed exchange of PNR data with Canada.

9. Legal basis of the proposal

The proposed decisions are to conclude and sign an agreement which has two main aims and components, one relating to the necessity of ensuring public security by means of the transfer of PNR data to Canada and the other relating to the protection of privacy and other fundamental rights and freedoms of individuals. Thus the substantive legal basis is Article 16(2) and Article 87(2)(a) of the Treaty on the Functioning of the European Union. Article 87 is a Title V legal basis.

Ireland is bound by EU Directive 2016/681 on PNR data transfer and processing.

The relevant EU legal framework on data protection, EU Regulation 2016/679 and Directive 2016/680, also applies.

10. Voting Method

QMV

11. Role of the EP

Co-decision

12. Category of proposal

Some significance

13. Implications for Ireland & Ireland's Initial View

Legal advice has been sought and no legal impediments are seen in regard to this proposed opt-in.

The proposals as referenced above take into account the applicable EU framework on PNR data transfer (Directive 2016/681), as interpreted by the Court of Justice of the EU in relevant case law. The transfer of data to third countries is provided for in Article 11 of the relevant EU Directive, 2016/681, which Ireland is bound by.

14. Impact on the public

No direct impact, potential for enhanced safety and security through more effective safeguards.

15. Have any consultations with Stakeholders taken place or are there any plans to do so?

No

16. Are there any subsidiarity issues for Ireland?

No

17. Anticipated negotiating period

The agreement is now finalised and the proposed Council decisions are in order to conclude and sign the agreement.

18. Proposed implementation date

Each Party shall notify the other Party in writing when it has completed the procedures necessary for the entry into force of this agreement. This Agreement shall enter into force on the date of the second of these notifications.

19. Consequences for national legislation

No legislative changes envisaged- see Section 13.

20. Method of Transposition into Irish law

Not applicable

21. Anticipated Transposition date

Not applicable

22. Consequences for the EU budget in Euros annually

None foreseen.

23. Contact name, telephone number and e-mail address of official in Department with primary responsibility

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Date 25/03/2024



Council of the
European Union

Brussels, 6 March 2024
(OR. en)

7315/24

**Interinstitutional File:
2024/0050(NLE)**

**IXIM 79
ENFOPOL 110
JAIEX 21
AVIATION 51
CDN 1**

COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	4 March 2024
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2024) 94 final
Subject:	Proposal for a COUNCIL DECISION on the signing, on behalf of the European Union, of an agreement between Canada and the European Union on the transfer and processing of Passenger Name Record (PNR) data

Delegations will find attached document COM(2024) 94 final.

Encl.: COM(2024) 94 final



Brussels, 4.3.2024
COM(2024) 94 final

2024/0050 (NLE)

Proposal for a

COUNCIL DECISION

on the signing, on behalf of the European Union, of an agreement between Canada and the European Union on the transfer and processing of Passenger Name Record (PNR) data

EN

EN

EXPLANATORY MEMORANDUM

The present proposal concerns the signature of an Agreement between the Canada and the European Union on the transfer and processing of Passenger Name Record (PNR) data (hereafter “the Agreement”).

1. CONTEXT OF THE PROPOSAL

Passenger name record (PNR) data is information provided by passengers and collected by and held in the air carriers’ reservation and departure control systems for their own commercial purposes. The content of PNR data varies depending on the information given during the booking and check-in process and may include, for example, dates of travel and the complete travel itinerary of the passenger or group of passengers travelling together, contact details like address and phone number, payment information, seat number and baggage information.

The collection and analysis of PNR data can provide the authorities with important elements allowing them to detect suspicious travel patterns and identify associates of criminals and terrorists, in particular those previously unknown to law enforcement authorities. Accordingly, the processing of PNR data has become a widely used law enforcement tool, in the EU and beyond, to detect terrorism and other forms of serious crime, such as drug-related offences, human trafficking and child sexual exploitation, and to prevent such crime from being committed. It has also proven to constitute an important source of information to support the investigation and prosecution of cases where such illegal activities have been committed¹.

Canadian legislation requires air carriers operating passenger flights to Canada to provide the Canada Border Services Agency (CBSA) with PNR data, prior to the passenger arrival to Canada to the extent such data is collected and contained in the air carriers' automated reservation and departure control systems in the normal course of their business. This legislation aims to significantly enhance CBSA's ability to conduct efficient and effective advance travel risk assessment of passengers and to facilitate bona fide travel, thereby enhancing the security of Canada in the fight against terrorism and other serious transnational crime.

The EU cooperates with Canada in the fight against terrorism and other serious transnational crime and considers the transfer of PNR data to Canada as a means to foster international law enforcement cooperation.

For this purpose, the European Community signed an Agreement in 2005 with Canada on the transfer and processing of PNR data.² The Agreement entered into force on 22 March 2006 and was based on (i) a series of Commitments that the CBSA gave as to the way it would process PNR data and (ii) an adequacy decision issued by the European Commission that considered the Commitments of the CBSA to provide an adequate protection of personal data.³ The Commitments of the CBSA and the adequacy decision expired on 22 September 2009.

Since then, Member States assumed the responsibility for ensuring the continuation of transfers of PNR data to Canada during this interim period, while CBSA confirmed to the Member States, the Council Presidency and the Commission that it will continue implementing its Commitments for such an interim period as it is necessary to negotiate and conclude a long term agreement between the EU and Canada.

¹ See also Report from the Commission to the European Parliament and the Council on the review of Directive (EU) 2016/681 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime; COM(2020) 305 final (24.07.2020).

² OJ L 82, 21.3.2006, p. 15.

³ OJ L 91, 29.3.2006, p. 49–60.

In 2010, the EU opened negotiations with Canada for the purpose of concluding a new Agreement laying down the conditions and the framework under which air carriers could transfer to the CBSA the PNR data of passengers flying between the EU and Canada. The new draft Agreement with Canada was signed on 25 June 2014 and submitted by the Council to the European Parliament in July 2014 for consent. On 30 January 2015, the European Parliament requested the Opinion of the Court of Justice as to whether the envisaged PNR Agreement with Canada is compatible with the Treaties and the Charter of Fundamental Rights of the European Union.

On 26 July 2017, the Court of Justice delivered Opinion 1/15⁴ and stated that the envisaged PNR Agreement between Canada and the EU could not be concluded in its form because several of its provisions were incompatible with the fundamental rights recognised by the EU, notably the right to data protection and respect for private life. The Court also held that the legal basis of such an Agreement should be the combination of Article 87(2)(a) TFEU and Article 16(2) TFEU.

Following the issuance of this Opinion, the EU and Canada have opened new negotiations with the purpose of signing a new Agreement in a manner which is compliant with the Court's requirements. Negotiations with Canada started on 20 June 2018 and, in line with the negotiating directives, focussed on the aspects necessary to draw the consequences from the said Opinion.

After a seventh and last round, which was held on 4 July 2023, the negotiators reached a preliminary agreement on 11 October 2023. The chief negotiators initialled the draft text of the Agreement on 27 November 2023.

The co-legislators have been regularly informed and consulted at all stages of the negotiations, notably by reporting to the Council's responsible working group and European Parliament's LIBE Committee. Prior to its initialling, the final draft of the agreement text has also been shared.

- **Consistency with existing policy provisions in the policy area**

The Commission has first set out the broad lines of it's the EU's external PNR policy in a 2003 Communication on the EU approach towards transfers of PNR data from the EU to third countries⁵, which were reviewed in a Communication adopted in 2010⁶.

There are currently three international agreements in force between the EU and third countries namely Australia⁷, the United States (2012)⁸ and the United Kingdom (2020)⁹ which cover the transfer and processing of PNR data from the EU. In addition to negotiations with Canada, the Commission is authorised to negotiate PNR agreements with Mexico and Japan and, in September 2023, has also recommended the opening of negotiations with Norway¹⁰, Iceland¹¹ and Switzerland¹².

In 2016, the European Parliament and the Council of the European Union adopted Directive (EU) 2016/681 on the use of PNR data for the prevention, detection, investigation and

⁴ ECLI:EU:C:2017:592.

⁵ COM(2003) 826 final.

⁶ COM(2010) 492 final (21.09.2010).

⁷ OJ L 186, 14.7.2012, p. 4–16.

⁸ OJ L 215, 11.8.2012, p. 5–14.

⁹ OJ L 149, 30.4.2021, p. 710 – 735.

¹⁰ COM(2023) 507 final.

¹¹ COM(2023) 508 final.

¹² COM(2023) 509 final.

prosecution of terrorist offences and serious crime (‘PNR Directive’)¹³. This Directive regulates the transfer and processing of PNR data in the European Union and lays down important safeguards for the protection of fundamental rights, in particular the rights to privacy and the protection of personal data. In its judgment in Case C-817/19 of June 2022, the Court of Justice of the EU confirmed the validity of this Directive with the Charter of Fundamental Rights of the EU and the Union Treaties,¹⁴.

At international level, an increasing number of third countries have started developing their capabilities to collect PNR data from air carriers. This trend is further prompted by Resolutions adopted by United Nations Security Council (in 2017 and 2019), requiring all States to develop the capability to collect and use PNR data¹⁵, 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 to the Chicago Convention which became applicable in February 2021.¹⁶

The Union position, as established by Council Decision (EU) 2021/121, welcomes the ICAO SARPs on PNR as laying down ambitious safeguards on data protection and therewith allowing significant progress to be made at international level. At the same time, this Council Decision considered, by means of requiring Member States to register a difference, that the requirements resulting from Union law (including relevant case-law), are more exacting than certain ICAO Standards, and that transfers from the EU to third countries require a legal basis establishing clear and precise rules and safeguards in relation to the use of PNR data by competent authorities of a third country¹⁷. In light of this, upon a call from the Council¹⁸, the Commission has started considering the demonstration of compliance with ICAO PNR Standards as an important element to take into account for entering into a PNR dialogue with any third country.

2. LEGAL BASIS AND PROPORTIONALITY

• Legal basis

Article 218(5) of the Treaty on the Functioning of the European Union (TFEU) provides for decisions ‘*authorising the signing of the agreement and, if necessary, its provisional application before entry into force.*’ Since the proposal’s aim is to receive an authorisation to sign the Agreement, the procedural legal basis is Article 218(5) TFEU. The proposal has two main aims and components, one relating to the necessity of ensuring public security by means

¹³ Directive (EU) 2016/681 of the European Parliament and of the Council of 27 April 2016 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime (OJ L 119, 4.5.2016, p. 132–149), hereinafter referred to as the ‘PNR Directive’ or ‘Directive (EU) 2016/681’.

¹⁴ Judgment of the Court (Grand Chamber) of 21 June 2022 “Ligue des droits humains ASBL v Conseil des ministres”, C-817/19, EU:C:2022:491. The judgement concerned a request for a preliminary ruling from the Cour Constitutionnelle of Belgium.

¹⁵ UNSCR 2396 (2017): “The Security Council: [...] 12. Decides that Member States shall develop the capability to collect, process and analyse, in furtherance of ICAO standards and recommended practices, passenger name record (PNR) data and to ensure PNR data is used by and shared with all their competent national authorities, with full respect for human rights and fundamental freedoms for the purpose of preventing, detecting and investigating terrorist offenses and related travel, [...]”. See also UNSCR 2482 (2019).

¹⁶ https://www.icao.int/safety/airnavigation/nationalitymarks/annexes_booklet_en.pdf

¹⁷ Council Decision (EU) 2021/121 of 28 January 2021 on the position to be taken on behalf of the European Union in reply to the State Letter sent by the International Civil Aviation Organization as regards Amendment 28 to Section D - Chapter 9 - Annex 9 to the Convention on International Civil Aviation (OJ L 37, 3.2.2021, p.6-9).

¹⁸ Council Conclusions of 7 June 2021 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.

of the transfer of PNR data to Canada and the other to the protection of privacy and other fundamental rights and freedoms of individuals. Thus the substantive legal basis is Article 16(2) and Article 87(2)(a) of the Treaty on the Functioning of the European Union.

- **Proportionality**

The Union's objectives with regard to this proposal as set out above can only be achieved by establishing a valid legal basis at Union level to ensure that appropriate protection of fundamental rights is granted to personal data transfers from the Union. The provisions of the agreement are limited to what is necessary to achieve its main objectives and strike a fair balance between the legitimate objective to maintain public security and the right of everyone to enjoy the protection of their personal data and private life.

- **Choice of the instrument**

Chapter V of Regulation 2016/679¹⁹ ('GDPR') requires that any transfer of personal data from the Union to a third countries be based on a valid instrument laying down appropriate safeguards. The present agreement constitutes one of those instruments, i.e. a legally binding and enforceable instrument between public authorities provided for in Article 46(2)(a) of that Regulation.

- **Fundamental rights**

The exchange of PNR data and its processing by the authorities of a third country constitutes an interference with the fundamental rights to privacy and data protection. However, the Agreement ensures the necessity and proportionality of any such interference in light of the legitimate purposes of the personal data processing, i.e. to prevent, detect, investigate and prosecute serious crime and terrorism. This is guaranteed by the application of adequate data protection safeguards to the personal data transferred and processed, in line with EU law, notably Articles 7, 8, 47 and 52 of the Charter of Fundamental Rights of the EU.

3. BUDGETARY IMPLICATIONS

There are no budgetary implications for the Union budget.

4. OTHER ELEMENTS

- **Detailed explanation of the specific provisions of the proposal**

The Agreement resulting from the negotiations contains several important safeguards for those persons whose data will be transferred to and processed in Canada. In full alignment with the requirements of the said Court Opinion and the negotiating directives, the provisions subject of the negotiations were notably:

Article 3: the purposes for which PNR data are processed are spelt out clearly and precisely;

Article 8: the processing of sensitive data by Canada is prohibited under the Agreement. Should Canada receive such information as part of PNR data under the Agreement, deletion is also required;

Article 10: oversight of Canada's compliance with these rules shall be exercised by independent public authorities;

¹⁹ OJ L 119, 4.5.2016, p. 1–88.

Article 11: individuals are notified of the use of their PNR;

Article 12: individuals may access (only) their own PNR data and are provided with the right to correction, redress and information;

Article 15: automated processing of PNR data will be based only on non-discriminatory and reliable criteria;

Article 16: the maximum retention period of five years will be combined with a requirement to delete the data after passengers' date of departure, unless a risk assessment indicates that there is a connection based on objective elements from which it may be inferred that the PNR data might make an effective contribution to address the purposes of the Agreement, in addition to the requirement for Canada to review its assessment every two years;

Article 17: any use of PNR data for other purposes than security and border control checks will be subject to prior review by a court or an independent authority;

Article 20: the onward transfers of PNR data to other government authorities will be subject to appropriate safeguards and, in case of disclosure outside Canada, limited to countries which have concluded a comparable Agreement with the EU or are subject to an adequacy decision of the Commission;

Annex: the PNR data elements to be transferred to Canada are determined in a clear and precise manner.

Proposal for a

COUNCIL DECISION

on the signing, on behalf of the European Union, of an agreement between Canada and the European Union on the transfer and processing of Passenger Name Record (PNR) data

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 16(2), and Article 87(2)(a) in conjunction with Article 218(5) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) On 7 December 2017, the Council authorised the Commission to open negotiations with Canada for an agreement on the transfer and use of Passenger Name Record (PNR) data to prevent and combat terrorism and other serious transnational crime.
- (2) The negotiations of an Agreement between Canada and the European Union on the transfer and processing of PNR data ('the Agreement') were successfully finalised in July 2023. The text of the Agreement was initialled on 27 November 2023.
- (3) The Agreement enables the transfer of PNR data to Canada for the purposes of preventing, detecting, investigating and prosecuting serious crime and terrorism.
- (4) The Agreement ensures full respect of the Charter of Fundamental Rights of the Union, as interpreted by the Court of Justice of the European Union, in particular the right to private and family life recognised in Article 7 of the Charter, the right to the protection of personal data recognised in Article 8 of the Charter and the right to effective remedy and fair trial recognised in Article 47 of the Charter. In particular, the Agreement includes adequate safeguards for the protection of personal data transferred under the Agreement.
- (5) [In accordance with Articles 1 and 2 of Protocol No 21 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 to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Decision and is not bound by it or subject to its application.] OR [In accordance with Article 3 of Protocol No 21 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 to the Treaty on the Functioning of the European Union, Ireland has notified [, by letter of ...] its wish to take part in the adoption and application of this Decision.].
- (6) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to 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 it or subject to its application,
- (7) The European Data Protection Supervisor delivered its Opinion [xxx] on [xx.xx.xxxx].
- (8) Therefore, the Agreement should be signed on behalf of the Union, subject to its conclusion at a later date,

HAS ADOPTED THIS DECISION:

Article 1

The signing of the Agreement between Canada and the European Union on the transfer and processing of Passenger Name Record (PNR) data is hereby approved on behalf of the Union, subject to the conclusion of the said Agreement.

The text of the Agreement to be signed is attached to this Decision.

Article 2

The Council Secretariat General shall establish the instrument of full powers to sign the Agreement, subject to its conclusion, for the person(s) indicated by the Commission.

Article 3

This Decision shall enter into force on the day of its adoption.

Done at Brussels,

*For the Council
The President*



Council of the
European Union

Brussels, 6 March 2024
(OR. en)

7323/24

**Interinstitutional File:
2024/0051(NLE)**

**IXIM 80
ENFOPOL 111
JAIEX 22
AVIATION 52
CDN 2**

COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	4 March 2024
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2024) 95 final
Subject:	Proposal for a COUNCIL DECISION on the conclusion, on behalf of the European Union, of an agreement between Canada and the European Union on the transfer and processing of Passenger Name Record (PNR) data

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1. CONTEXT OF THE PROPOSAL

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Canadian legislation requires air carriers operating passenger flights to Canada to provide the Canada Border Services Agency (CBSA) with PNR data, prior to the passenger arrival to Canada to the extent such data is collected and contained in the air carriers' automated reservation and departure control systems in the normal course of their business. This legislation aims to significantly enhance CBSA's ability to conduct efficient and effective advance travel risk assessment of passengers and to facilitate bona fide travel, thereby enhancing the security of Canada in the fight against terrorism and other serious transnational crime.

The EU cooperates with Canada in the fight against terrorism and other serious transnational crime and considers the transfer of PNR data to Canada as a means to foster international law enforcement cooperation.

For this purpose, the European Community signed an Agreement in 2005 with Canada on the transfer and processing of PNR data.² The Agreement entered into force on 22 March 2006 and was based on (i) a series of Commitments that the CBSA gave as to the way it would process PNR data and (ii) an adequacy decision issued by the European Commission that considered the Commitments of the CBSA to provide an adequate protection of personal data.³ The Commitments of the CBSA and the adequacy decision expired on 22 September 2009.

Since then, Member States assumed the responsibility for ensuring the continuation of transfers of PNR data to Canada during this interim period, while CBSA confirmed to the Member States, the Council Presidency and the Commission that it will continue implementing its Commitments for such an interim period as it is necessary to negotiate and conclude a long term agreement between the EU and Canada.

¹ See also Report from the Commission to the European Parliament and the Council on the review of Directive (EU) 2016/681 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime; COM(2020) 305 final (24.07.2020).

² OJ L 82, 21.3.2006, p. 15.

³ OJ L 91, 29.3.2006, p. 49–60.

In 2010, the EU opened negotiations with Canada for the purpose of concluding a new Agreement laying down the conditions and the framework under which air carriers could transfer to the CBSA the PNR data of passengers flying between the EU and Canada. The new draft Agreement with Canada was signed on 25 June 2014 and submitted by the Council to the European Parliament in July 2014 for consent. On 30 January 2015, the European Parliament requested the Opinion of the Court of Justice as to whether the envisaged PNR Agreement with Canada is compatible with the Treaties and the Charter of Fundamental Rights of the European Union.

On 26 July 2017, the Court of Justice delivered Opinion 1/15⁴ and stated that the envisaged PNR Agreement between Canada and the EU could not be concluded in its form because several of its provisions were incompatible with the fundamental rights recognised by the EU, notably the right to data protection and respect for private life. The Court also held that the legal basis of such an Agreement should be the combination of Article 87(2)(a) TFEU and Article 16(2) TFEU.

Following the issuance of this Opinion, the EU and Canada have opened new negotiations with the purpose of signing a new Agreement in a manner which is compliant with the Court's requirements. Negotiations with Canada started on 20 June 2018 and, in line with the negotiating directives, focussed on the aspects necessary to draw the consequences from the said Opinion.

After a seventh and last round, which was held on 4 July 2023, the negotiators reached a preliminary agreement on 11 October 2023. The chief negotiators initialled the draft text of the Agreement on 27 November 2023.

The co-legislators have been regularly informed and consulted at all stages of the negotiations, notably by reporting to the Council's responsible working group and European Parliament's LIBE Committee. Prior to its initialling, the final draft of the agreement text has also been shared.

- **Consistency with existing policy provisions in the policy area**

The Commission has first set out the broad lines of it's the EU's external PNR policy in a 2003 Communication on the EU approach towards transfers of PNR data from the EU to third countries⁵, which were reviewed in a Communication adopted in 2010⁶.

There are currently three international agreements in force between the EU and third countries namely Australia⁷, the United States (2012)⁸ and the United Kingdom (2020)⁹ which cover the transfer and processing of PNR data from the EU. In addition to negotiations with Canada, the Commission is authorised to negotiate PNR agreements with Mexico and Japan and, in September 2023, has also recommended the opening of negotiations with Norway¹⁰, Iceland¹¹ and Switzerland¹².

In 2016, the European Parliament and the Council of the European Union adopted Directive (EU) 2016/681 on the use of PNR data for the prevention, detection, investigation and

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⁵ COM(2003) 826 final.

⁶ COM(2010) 492 final (21.09.2010).

⁷ OJ L 186, 14.7.2012, p. 4–16.

⁸ OJ L 215, 11.8.2012, p. 5–14.

⁹ OJ L 149, 30.4.2021, p. 710 – 735.

¹⁰ COM(2023) 507 final.

¹¹ COM(2023) 508 final.

¹² COM(2023) 509 final.

prosecution of terrorist offences and serious crime (‘PNR Directive’)¹³. This Directive regulates the transfer and processing of PNR data in the European Union and lays down important safeguards for the protection of fundamental rights, in particular the rights to privacy and the protection of personal data. In its judgment in Case C-817/19 of June 2022, the Court of Justice of the EU confirmed the validity of this Directive, in particular in light of the Charter of Fundamental Rights of the EU and the Union Treaties¹⁴.

At international level, an increasing number of third countries have started developing their capabilities to collect PNR data from air carriers. This trend is further prompted by Resolutions adopted by United Nations Security Council (in 2017 and 2019), requiring all States to develop the capability to collect and use PNR data¹⁵, 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 to the Chicago Convention which became applicable in February 2021.¹⁶

The Union position, as established by Council Decision (EU) 2021/121, welcomes the ICAO SARPs on PNR as laying down ambitious safeguards on data protection and therewith allowing significant progress to be made at international level. At the same time, this Council Decision considered, by means of requiring Member States to register a difference, that the requirements resulting from Union law (including relevant case-law), are more exacting than certain ICAO Standards, and that transfers from the EU to third countries require a legal basis establishing clear and precise rules and safeguards in relation to the use of PNR data by competent authorities of a third country¹⁷. In light of this, upon a call from the Council¹⁸, the Commission has started considering the demonstration of compliance with ICAO PNR Standards as an important element to take into account for entering into a PNR dialogue with any third country.

2. LEGAL BASIS AND PROPORTIONALITY

• Legal basis

Article 218(6) of the Treaty on the Functioning of the European Union (TFEU) provides for decisions ‘*concluding the agreement.*’ Since the proposal concerns areas where the ordinary legislative procedure is applied, the consent of the European Parliament is required and, therefore, the procedural legal basis is Article 218(6), point (a)(v) TFEU.

¹³ Directive (EU) 2016/681 of the European Parliament and of the Council of 27 April 2016 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime (OJ L 119, 4.5.2016, p. 132–149), hereinafter referred to as the ‘PNR Directive’ or ‘Directive (EU) 2016/681’.

¹⁴ Judgment of the Court (Grand Chamber) of 21 June 2022 “Ligue des droits humains ASBL v Conseil des ministres”, C-817/19, EU:C:2022:491. The judgement concerned a request for a preliminary ruling from the Cour Constitutionnelle of Belgium.

¹⁵ UNSCR 2396 (2017): “The Security Council: [...] 12. Decides that Member States shall develop the capability to collect, process and analyse, in furtherance of ICAO standards and recommended practices, passenger name record (PNR) data and to ensure PNR data is used by and shared with all their competent national authorities, with full respect for human rights and fundamental freedoms for the purpose of preventing, detecting and investigating terrorist offenses and related travel, [...]”. See also UNSCR 2482 (2019).

¹⁶ https://www.icao.int/safety/airnavigation/nationalitymarks/annexes_booklet_en.pdf

¹⁷ Council Decision (EU) 2021/121 of 28 January 2021 on the position to be taken on behalf of the European Union in reply to the State Letter sent by the International Civil Aviation Organization as regards Amendment 28 to Section D - Chapter 9 - Annex 9 to the Convention on International Civil Aviation (OJ L 37, 3.2.2021, p.6-9).

¹⁸ Council Conclusions of 7 June 2021 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 proposal has two main aims and components, one relating to the necessity of ensuring public security by means of the transfer of PNR data to Canada and the other to the protection of privacy and other fundamental rights and freedoms of individuals. Thus the substantive legal basis is Article 16(2) and Article 87(2)(a) TFEU.

- **Proportionality**

The Union's objectives with regard to this proposal as set out above can only be achieved by establishing a valid legal basis at Union level to ensure that appropriate protection of fundamental rights is granted to personal data transfers from the Union. The provisions of the agreement are limited to what is necessary to achieve its main objectives and strike a fair balance between the legitimate objective to maintain public security and the right of everyone to enjoy the protection of their personal data and private life.

- **Choice of the instrument**

Chapter V of Regulation 2016/679¹⁹ ('GDPR') requires that any transfer of personal data from the Union to a third countries be based on a valid instrument laying down appropriate safeguards. The present agreement constitutes one of those instruments, i.e. a legally binding and enforceable instrument between public authorities provided for in Article 46(2)(a) of that Regulation.

- **Fundamental rights**

The exchange of PNR data and its processing by the authorities of a third country constitutes an interference with the fundamental rights to privacy and data protection. However, the Agreement ensures the necessity and proportionality of any such interference in light of the legitimate purposes of the personal data processing, i.e. to prevent, detect, investigate and prosecute serious crime and terrorism. This is guaranteed by the application of adequate data protection safeguards to the personal data transferred and processed, in line with EU law, notably Articles 7, 8, 47 and 52 of the Charter of Fundamental Rights of the EU.

3. BUDGETARY IMPLICATIONS

There are no budgetary implications for the Union budget.

4. OTHER ELEMENTS

- **Detailed explanation of the specific provisions of the proposal**

The Agreement resulting from the negotiations, attached to the proposed Decision, contains several important safeguards for those persons whose data will be transferred to and processed in Canada. In full alignment with the requirements of the said Court Opinion and the negotiating directives, the provisions of the Agreement subject of the negotiations were notably:

Article 3: the purposes for which PNR data are processed are spelt out clearly and precisely;

Article 8: the processing of sensitive data by Canada is prohibited under the Agreement and should Canada receive such data as part of PNR data under the Agreement, deletion is required;

Article 10: oversight of Canada's compliance with these rules shall be exercised by independent public authorities;

¹⁹ OJ L 119, 4.5.2016, p. 1–88.

Article 11: individuals are notified of the use of their PNR;

Article 12: individuals may access (only) their own PNR data and are provided with the right to correction, redress and information;

Article 15: automated processing of PNR data will be based only on non-discriminatory and reliable criteria;

Article 16: the maximum retention period of five years will be combined with a requirement to delete the data after passengers' date of departure, unless a risk assessment indicates that there is a connection based on objective elements from which it may be inferred that the PNR data might make an effective contribution to address the purposes of the Agreement, in addition to the requirement for Canada to review its assessment every two years;

Article 17: any use of PNR data for other purposes than security and border control checks will be subject to prior review by a court or an independent authority;

Article 20: the onward transfers of PNR data to other government authorities will be subject to appropriate safeguards and, in case of disclosure outside Canada, limited to countries which have concluded a comparable Agreement with the EU or are subject to an adequacy decision of the Commission;

Annex: the PNR data elements to be transferred to Canada are determined in a clear and precise manner.

Proposal for a

COUNCIL DECISION

on the conclusion, on behalf of the European Union, of an agreement between Canada and the European Union on the transfer and processing of Passenger Name Record (PNR) data

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 16(2) and Article 87(2)(a) in conjunction with Article 218(6), second subparagraph, point (a)(v) thereof,

Having regard to the Proposal from the European Commission,

Having regard to the consent of the European Parliament,

Whereas:

- (1) In accordance with Council Decision (EU) [XXXX], the Agreement between Canada and the European Union on the transfer and processing of Passenger Name Record (PNR) data ('the Agreement') was signed on [XX.XX.XXXX], subject to its conclusion at a later date.
- (2) The Agreement enables the transfer of PNR data to Canada for the purposes of preventing, detecting, investigating and prosecuting serious crime and terrorism.
- (3) The Agreement ensures full respect of the Charter of Fundamental Rights of the Union, as interpreted by the Court of Justice of the European Union, in particular the right to private and family life recognised in Article 7 of the Charter, the right to the protection of personal data recognised in Article 8 of the Charter and the right to effective remedy and fair trial recognised in Article 47 of the Charter. In particular, the Agreement includes adequate safeguards for the protection of personal data transferred under the Agreement.
- (4) [In accordance with Articles 1 and 2 of Protocol No 21 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 to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Decision and is not bound by it or subject to its application.] OR [In accordance with Article 3 of Protocol No 21 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 to the Treaty on the Functioning of the European Union, Ireland has notified [, by letter of ...] its wish to take part in the adoption and application of this Decision.]
- (5) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to 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 it or subject to its application,
- (6) The European Data Protection Supervisor delivered its Opinion [xxx] on [xx.xx.xxxx].
- (7) The Agreement should be approved on behalf of the Union,

HAS ADOPTED THIS DECISION:

Article 1

The Agreement between Canada and the European Union on the transfer and processing of Passenger Name Record (PNR) data is hereby approved on behalf of the Union.

The text of the Agreement is attached to this Decision.

Article 2

The Commission shall proceed, on behalf of the Union, to make the notification provided for in Article 31 of the Agreement³⁹, in order to express the consent of the Union to be bound by the Agreement.

Article 3

This Decision shall enter into force on the day of its adoption.

Done at Brussels,

*For the Council
The President*

²⁰ The date of entry into force of the Agreement will be published in the Official Journal of the European Union by the General Secretariat of the Council.



Council of the
European Union

Brussels, 6 March 2024
(OR. en)

**Interinstitutional File:
2024/0051(NLE)**

**7323/24
ADD 1**

**IXIM 80
ENFOPOL 111
JAIEX 22
AVIATION 52
CDN 2**

COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	4 March 2024
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2024) 95 final ANNEX
Subject:	ANNEX to the Proposal for a Council Decision on the conclusion, on behalf of the European Union, of an Agreement between Canada and the European Union on the transfer and processing of Passenger Name Record (PNR) data

Delegations will find attached document COM(2024) 95 final ANNEX.

Encl.: COM(2024) 95 final ANNEX



Brussels, 4.3.2024
COM(2024) 95 final

ANNEX

ANNEX

to the

Proposal for a Council Decision

**on the conclusion, on behalf of the European Union, of an Agreement between Canada
and the European Union on the transfer and processing of Passenger Name Record
(PNR) data**

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ANNEX

AGREEMENT BETWEEN CANADA AND THE EUROPEAN UNION ON THE TRANSFER AND PROCESSING OF PASSENGER NAME RECORD DATA

CANADA

and

THE EUROPEAN UNION,

the "Parties",

SEEKING to prevent, detect, investigate, and prosecute terrorism and terrorist-related offences, as well as other serious transnational crime, as a means of protecting their respective democratic societies and common values to promote security and the rule of law;

RECOGNIZING the importance of preventing, detecting, investigating, and prosecuting terrorism and terrorist-related offences, as well as other serious transnational crime, while preserving human rights and fundamental freedoms, in particular rights to privacy and data protection;

SEEKING to enhance and encourage cooperation between the Parties in the spirit of the partnership between Canada and the European Union;

RECOGNIZING that information sharing is an essential component of the fight against terrorism and related crimes and other serious transnational crime, and that in this context, the use of Passenger Name Record (PNR) data is a critically important instrument to pursue these goals;

RECOGNIZING that, in order to safeguard public security and for law enforcement purposes, rules should be laid down to govern the transfer of PNR data by air carriers to Canada;

RECOGNIZING that the Parties share common values with respect to data protection and privacy reflected in their respective law;

MINDFUL of the European Union's commitments pursuant to Article 6 of the Treaty on European Union on respect for fundamental rights, the right to privacy with regard to the processing of personal data as stipulated in Article 16 of the Treaty on the Functioning of the European Union, the principles of proportionality and necessity concerning the right to private and family life, the respect for privacy, and the protection of personal data under Articles 7 and 8 of the Charter of Fundamental Rights of the European Union, Article 8 of the European Convention on the Protection of Human Rights and Fundamental Freedoms, Council of Europe Convention No. 108 for the Protection of Individuals with regard to Automatic Processing of Personal Data and its additional Protocol 181;

HAVING REGARD to the relevant provisions of the Canadian Charter of Rights and Freedoms and Canadian privacy legislation;

HAVING REGARD to Opinion 1/15 of the Court of Justice of the European Union of 26 July 2017 on the Agreement between Canada and the European Union on the transfer and processing of Passenger Name Record data done at Brussels on 25 June 2014;

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NOTING the European Union's commitment to ensuring that air carriers are not prevented from complying with Canadian law regarding the transfer of PNR data from the European Union to Canada pursuant to this Agreement;

RECOGNIZING that this Agreement is not intended to apply to advance passenger information that is collected and transmitted by air carriers to Canada for the purpose of border control;

RECOGNIZING also that this Agreement does not prevent Canada from continuing to process information from air carriers in exceptional circumstances where necessary to mitigate any serious and immediate threat to air transportation or national security respecting the strict limitations laid down in Canadian law and in any case without exceeding the limitations provided for in this Agreement;

NOTING the interest of the Parties, as well as Member States of the European Union in exchanging information regarding the method of transmission of PNR data as well as the disclosure of PNR data outside Canada as set out in the relevant articles of this Agreement, and further noting the European Union's interest in having this addressed in the context of the consultation and review mechanism set out in this Agreement;

NOTING the commitment of Canada that the Canadian Competent Authority processes PNR data for the purpose of preventing, detecting, investigating and prosecuting terrorist offences and serious transnational crime in strict compliance with safeguards on privacy and the protection of personal data, as set out in this Agreement;

STRESSING the importance of sharing PNR data and relevant and appropriate analytical information containing PNR data obtained under this Agreement by Canada with competent police and judicial authorities of Member States of the European Union, Europol and Eurojust as a means to foster international police and judicial cooperation;

AFFIRMING that this Agreement reflects specific features of the legal and institutional frameworks of the Parties, as well as of their operational cooperation regarding PNR data, and does not constitute a precedent for other arrangements;

HAVING REGARD to the United Nations Security Council Resolutions 2396 (2017) and 2482 (2019) and to the International Civil Aviation Organisation Standards and Recommended Practices for the collection, use, processing and protection of PNR data ('the ICAO SARPs') adopted as Amendment 28 to Annex 9 of the Convention on International Civil Aviation (the Chicago Convention),

HAVE AGREED AS FOLLOWS:

GENERAL PROVISIONS

ARTICLE 1

Objective of the Agreement

In this Agreement, the Parties set out the conditions for the transfer of Passenger Name Record (PNR) data from the European Union and their use to ensure the security and safety of the public and prescribe the means by which the data is protected.

ARTICLE 2

Definitions

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For the purposes of this Agreement:

- (a) "air carrier" means a commercial transportation company using aircraft as its means of transport for passengers travelling between Canada and the European Union;
- (b) "Canadian Competent Authority" means the Canadian authority responsible for receiving and processing PNR data under this Agreement;
- (c) 'date of departure' means the period of maximum lawful stay in Canada of the passenger concerned, unless Canada can readily and reliably determine the actual date of departure;
- (d) "Passenger Name Record data" ("PNR data") means the records created by an air carrier for each journey booked by or on behalf of any passenger, necessary for the processing and control of reservations. Specifically, as used in this Agreement, PNR data consists of the elements set out in the Annex to this Agreement;
- (e) "processing" means any operation or set of operations performed on PNR data, whether or not by automatic means, such as collection, recording, organization, storage, adaptation or alteration, calling-up, retrieval, consultation, use, transfer, dissemination, disclosure or otherwise making available, alignment or combination, blocking, masking, deletion, or destruction;
- (f) "sensitive data" means any information that reveals racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, or information about a person's health or sex life.

ARTICLE 3

Purposes of the use of PNR data

1. Canada shall ensure that PNR data received pursuant to this Agreement is processed strictly for the purpose of preventing, detecting, investigating or prosecuting terrorist offences or serious transnational crime and to oversee the processing of PNR data within the terms of this Agreement, including for analytical operations.

2. For the purposes of this Agreement, "terrorist offence" constitutes:

(a) an act or omission that is committed for a political, religious or ideological purpose, objective or cause with the intention of intimidating the public with regard to its security, including its economic security, or with the intention of compelling a person, government or domestic or international organization to do or refrain from doing any act, and that intentionally:

(i) causes death or serious bodily harm;

(ii) endangers an individual's life;

(iii) causes a serious risk to the health or safety of the public;

(iv) causes substantial property damage likely to result in the harm referred to in (i) to (iii); or

(v) causes serious interference with or serious disruption of an essential service, facility or system, other than as a result of lawful or unlawful advocacy, protest, dissent or stoppage of work, such as a strike, that is not intended to result in the harm referred to in (i) to (iii); or

(b) activities constituting an offence within the scope and as defined in applicable international conventions and protocols relating to terrorism; or

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(c) knowingly participating in or contributing to or instructing a person, a group, or an organization to carry out any activity for the purpose of enhancing a terrorist entity's ability to facilitate or carry out an act or omission described in (a) or (b); or

(d) committing an indictable offence where the act or omission constituting the offence is committed for the benefit of, at the direction of, or in association with a terrorist entity; or

(e) collecting property or inviting a person, a group, or an organization to provide, providing or making available property or financial or other related services for the purpose of carrying out an act or omission described in (a) or (b) or using or possessing property for the purpose of carrying out an act or omission described in (a) or (b); or

(f) attempting or threatening to commit an act or omission described in (a) or (b), conspiring, facilitating, instructing or counselling in relation to an act or omission described in (a) or (b), or being an accessory after the fact, or harbouring or concealing for the purpose of enabling a terrorist entity to facilitate or carry out an act or omission described in (a) or (b).

For the purposes of this paragraph, "terrorist entity" means:

(i) a person, a group, or an organization that has as one of its purposes or activities facilitating or carrying out an act or omission described in (a) or (b); or

(ii) a person, a group, or an organization that knowingly acts on behalf of, at the direction of or in association with such a person, group or organization in (i).

3. For the purposes of this Agreement, serious transnational crime means any offence punishable in Canada by a maximum deprivation of liberty of at least four years or a more serious penalty and as they are defined by the Canadian law, if the crime is transnational in nature.

For the purposes of this Agreement, a crime is considered as transnational in nature if it is committed in:

(a) more than one country;

(b) one country but a substantial part of its preparation, planning, direction or control takes place in another country;

(c) one country but involves an organized criminal group that engages in criminal activities in more than one country;

(d) one country but has substantial effects in another country; or

(e) one country and the offender is in or intends to travel to another country.

4. In exceptional cases, the Canadian Competent Authority may process PNR data where necessary to protect the vital interests of any individual, such as:

(a) a risk of death or serious injury; or

(b) a significant public health risk, in particular as required by internationally recognised standards.

5. Canada may also process PNR data on a case-by-case basis where the disclosure of relevant PNR data is compelled:

(a) by a Canadian court or administrative tribunal in a proceeding directly related to a purpose under article 3(1); or

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(b) by a Canadian criminal court if the order is made to comply with the rights of an accused under the Canadian Charter of Rights and Freedoms.

ARTICLE 4

Ensuring PNR data is provided

1. The European Union shall ensure that air carriers are not prevented from transferring PNR data to the Canadian Competent Authority pursuant to this Agreement.
2. Canada shall not require an air carrier to provide elements of PNR data that are not already collected or held by the air carrier for reservation purposes.
3. Canada shall delete upon receipt any data transferred to it by an air carrier, pursuant to this Agreement, if that data element is not listed in the Annex.
4. The Parties shall ensure that air carriers may transfer PNR data to the Canadian Competent Authority through authorized agents, who act on behalf of and under the responsibility of the air carrier, for the purpose of and under the conditions laid down in this Agreement.

ARTICLE 5

Adequacy

Subject to compliance with this Agreement, the processing and use by the Canadian Competent Authority is deemed to provide an adequate level of protection, within the meaning of relevant European Union data protection law. An air carrier that provides PNR data to Canada under this Agreement is deemed to comply with European Union legal requirements for PNR data transfer from the European Union to Canada.

ARTICLE 6

Police and judicial cooperation

1. Canada shall share, as soon as practicable, relevant and appropriate analytical information containing PNR data obtained under this Agreement with Europol or Eurojust, within the scope of their respective mandates, or the police or a judicial authority of a Member State of the European Union. Canada shall ensure that this information is shared in accordance with agreements and arrangements on law enforcement or information sharing between Canada and Europol, Eurojust, or that Member State.
2. Canada shall share, at the request of Europol or Eurojust, within the scope of their respective mandates, or the police or a judicial authority of a Member State of the European Union, PNR data or analytical information containing PNR data obtained under this Agreement, in specific cases to prevent, detect, investigate, or prosecute within the European Union a terrorist offence or serious transnational crime. Canada shall make this information available in accordance with agreements and arrangements on law enforcement, judicial cooperation, or information sharing, between Canada and Europol, Eurojust or that Member State.

SAFEGUARDS APPLICABLE TO THE PROCESSING OF PNR DATA

ARTICLE 7

Non-Discrimination

Canada shall ensure that the safeguards applicable to the processing of PNR data apply to all passengers on an equal basis without unlawful discrimination.

ARTICLE 8

Use of sensitive data

Any processing of sensitive PNR data as defined in Article 2 is prohibited under this Agreement. To the extent that the PNR data received under this Agreement by the Canadian Competent Authority includes sensitive data, the Canadian Competent Authority shall delete such data.

ARTICLE 9

Data security and integrity

1. Canada shall implement regulatory, procedural or technical measures to protect PNR data against accidental, unlawful or unauthorized access, processing or loss.
2. Canada shall ensure compliance verification and the protection, security, confidentiality, and integrity of the data. Canada shall:
 - (a) apply encryption, authorization, and documentation procedures to the PNR data;
 - (b) limit access to PNR data to authorized officials;
 - (c) hold PNR data in a secure physical environment that is protected with access controls; and
 - (d) establish a mechanism that ensures that PNR data queries are conducted in a manner consistent with Article 3.
3. If an individual's PNR data is accessed or disclosed without authorization, Canada shall take measures to notify that individual, to mitigate the risk of harm, and to take remedial action.
4. Canada shall ensure that the Canadian Competent Authority promptly informs the European Commission of any significant incidents of accidental, unlawful or unauthorized access, processing or loss of PNR data.
5. Canada shall ensure that any breach of data security, in particular leading to accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access, or any unlawful forms of processing, is subject to effective and dissuasive corrective measures which might include sanctions.

ARTICLE 10

Oversight

1. The data protection safeguards for the processing of PNR data under this Agreement shall be subject to oversight by one or more independent public authorities (the “overseeing authorities”). Canada shall ensure that the overseeing authorities have effective powers to investigate compliance with the rules related to the collection, use, disclosure, retention, or disposal of PNR data. The overseeing authorities may conduct compliance reviews and investigations, may report findings and may make recommendations to the Canadian

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Competent Authority. Canada shall ensure that the overseeing authorities have the power to refer violations of law related to this Agreement for prosecution or disciplinary action, when appropriate.

2. Canada shall ensure that the overseeing authorities ensure that complaints relating to non-compliance with this Agreement are received, investigated, responded to, and appropriately redressed.

3. In addition, Canada shall apply this Agreement subject to independent review by other designated public entities that have the mandate to ensure the oversight or accountability of the public administration.

ARTICLE 11

Transparency and notification to passengers

1. Canada shall ensure that the Canadian Competent Authority makes the following information available on its website:

- (a) a list of the legislation authorizing the collection of PNR data;
- (b) the reason for the collection of PNR data;
- (c) the manner of protecting the PNR data;
- (d) the manner and extent to which the PNR data may be disclosed;
- (e) information regarding access, correction, notation and redress; and
- (f) contact information for inquiries.

2. The Parties shall work with interested parties, such as the air travel industry, to promote transparency, preferably at the time of booking, by providing the following information to passengers:

- (a) the reasons for PNR data collection;
- (b) the use of PNR data;
- (c) the procedure for requesting access to PNR data; and
- (d) the procedure for requesting the correction of PNR data.

3. If PNR data retained in accordance with Article 16 has been used subject to the conditions set out in Article 17, or has been disclosed in accordance with Article 19 or Article 20, Canada shall notify, taking into account reasonable efforts, the passengers concerned in writing, individually and within a reasonable time once such notification is no longer liable to jeopardise the investigations by the government authorities concerned, to the extent the relevant contact information of the passengers is available or can be retrieved. The notification shall include information on how the individual concerned can seek administrative or judicial redress pursuant to Article 14.

ARTICLE 12

Access by individuals to their PNR data

- 1. Canada shall ensure that any individual may access their PNR data.
- 2. Canada shall ensure that the Canadian Competent Authority, within a reasonable time shall:

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- (a) provide the individual with a copy of their PNR data if the individual makes a written request for their PNR data;
- (b) reply in writing to any request;
- (c) provide the individual with access to recorded information confirming that the individual's PNR data has been disclosed, if the individual requests that confirmation;
- (d) set out the legal or factual reasons for any refusal to allow access to the individual's PNR data;
- (e) inform the individual if the PNR data does not exist; and
- (f) inform the individual that they may make a complaint and of the complaint procedure.

3. For important reasons of public interest, Canada may make any access to information under this Article subject to reasonable legal requirements and limitations, including any limitations necessary to prevent, detect, investigate, or prosecute criminal offences, or to protect public or national security, with due regard for the legitimate interests of the individual concerned.

ARTICLE 13

Correction or annotation for individuals

1. Canada shall ensure that any individual may request the correction of their PNR data.
2. Canada shall ensure that the Canadian Competent Authority considers all written requests for correction and shall, within a reasonable time:
 - (a) correct the PNR data and notify the individual that the correction has been made; or
 - (b) refuse all or part of the correction, and:
 - (i) attach a note to the PNR data reflecting any correction requested that was refused;
 - (ii) notify the individual that:
 - i. the request for correction is refused, and set out the legal or factual reasons for the refusal;
 - ii. the note under sub-paragraph (i) is attached to the PNR data; and
 - (c) inform the individual that they may make a complaint and of the complaint procedure.

ARTICLE 14

Administrative and judicial redress

1. Canada shall ensure that an independent public authority receives, investigates and responds to complaints lodged by an individual concerning their request for access, correction or annotation of their PNR data. Canada shall ensure that the relevant authority notifies the complainant of the means of seeking the judicial redress set out in paragraph 2.
2. Canada shall ensure that any individual who is of the view that their rights have been infringed by a decision or action in relation to their PNR data may seek effective judicial redress

in accordance with Canadian law by way of judicial review or such other remedy that may include compensation.

ARTICLE 15

Automated processing of PNR data

1. Canada shall ensure that any automated processing of PNR data is based on non-discriminatory, specific and reliable pre-established models and criteria to enable the Canadian Competent Authority to:

(a) arrive at results targeting individuals who might be under a reasonable suspicion of involvement or participation in terrorist offences or serious transnational crime, or

(b) in exceptional circumstances, protect the vital interests of any individual as set out in Article 3(4).

2. Canada shall ensure that the databases against which PNR data is compared are reliable, up to date and limited to those used by Canada in relation to the purposes set out in Article 3.

3. Canada shall not take any decisions significantly adversely affecting an individual solely on the basis of automated processing of PNR data.

ARTICLE 16

Retention of PNR data

1. Canada shall not retain PNR data for more than five years from the date that it receives the PNR data.

2. Canada shall review the PNR data retention period every two years and determine whether it remains commensurate with the level of risk of terrorism and serious transnational crime originating from and transiting through the European Union.

Canada shall provide a classified report to the European Union outlining the outcome of the review, including the level of risk identified, factors considered in minimizing the data retention period, and the related retention decision.

3. PNR data may be retained under this Agreement beyond the passenger's date of departure, where Canada considers that there is a connection with the purposes set in Article 3, based on objective elements from which it may be inferred that the PNR data might make an effective contribution to address such purposes.

4. Canada shall restrict access to PNR data to a limited number of officials specifically authorized by Canada.

5. The use of the PNR data retained under this article is subject to the conditions laid down in Article 17.

6. Canada shall depersonalize the PNR data through masking identifying information of all passengers at the latest 30 days after Canada receives it.

7. Canada may unmask PNR data only if, on the basis of available information, it is necessary to carry out investigations under the scope of Article 3, as follows:

(a) from 30 days to two years after initial receipt, only by a limited number of specifically authorized officials; and

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(b) from two years to five years after initial receipt, only with prior permission by the Head of the Canadian Competent Authority, or a senior official specifically mandated by the Head.

8. Notwithstanding paragraph 1:

(a) Canada may retain PNR data, required for any specific action, review, investigation, enforcement action, judicial proceeding, prosecution, or enforcement of penalties, until concluded;

(b) Canada shall retain the PNR data referred to in (a) for an additional two-year period only to ensure the accountability of or oversee public administration so that it may be disclosed to the passenger should the passenger request it.

9. Canada shall destroy the PNR data at the end of the PNR data retention period.

ARTICLE 17

Conditions for the use of PNR data

The Canadian Competent Authority may only use PNR data retained in accordance with Article 16 for purposes other than security and border control checks where new circumstances based on objective grounds indicate that the PNR data of one or more passengers might make an effective contribution to the purposes set out in Article 3. Any such use, including disclosure, shall be subject to prior review by a court or by an independent administrative body based on a reasoned request by the competent authorities within the framework of procedures for the prevention, detection or prosecution of crime, except:

(a) in cases of validly established urgency; or,

(b) for the purpose of verifying the reliability and currency of the pre-established models and criteria on which the automated processing of PNR data is based, or of defining new models and criteria for such processing.

ARTICLE 18

Logging and documenting of PNR data processing

Canada shall log and document all processing of PNR data. Canada shall only use a log or document to:

(a) self-monitor and to verify the lawfulness of data processing;

(b) ensure proper data integrity or system functionality;

(c) ensure the security of data processing; and

(d) ensure oversight and accountability of the public administration.

ARTICLE 19

Disclosure within Canada

1 Canada shall ensure that the Canadian Competent Authority does not disclose PNR data to other government authorities in Canada unless the following conditions are met:

(a) the PNR data is disclosed to government authorities whose functions are directly related to the purposes set out in Article 3;

(b) the PNR data is disclosed only on a case-by-case basis;

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(c) under the particular circumstances the disclosure is necessary for the purposes set out in Article 3;

(d) only the minimum amount of PNR data necessary is disclosed;

(e) the receiving government authority affords protection equivalent to the safeguards described in this Agreement; and

(f) the receiving government authority does not disclose the PNR data to another entity unless the disclosure is authorized by the Canadian Competent Authority respecting the conditions laid down in this paragraph.

2. When transferring analytical information containing PNR data obtained under this Agreement, the safeguards applying to PNR data in this Article shall be respected.

ARTICLE 20

Disclosure outside Canada

1. Canada shall ensure that the Canadian Competent Authority does not disclose PNR data to government authorities in countries other than the Member States of the European Union unless all the following conditions are met:

(a) the PNR data is disclosed to government authorities whose functions are directly related to the purposes set out in Article 3;

(b) the PNR data is disclosed only on a case-by-case basis;

(c) the PNR data is disclosed only if necessary for the purposes set out in Article 3;

(d) only the minimum PNR data necessary is disclosed;

(e) the country to which the data is disclosed has either concluded an Agreement with the European Union that provides for the protection of personal data comparable to this Agreement or is subject to a decision of the European Commission pursuant to European Union law, finding that said country ensures an adequate level of data protection within the meaning of European Union law.

2. As an exception to paragraph 1(e), the Canadian Competent Authority may share PNR data with another country if the Head of the Canadian Competent Authority, or a senior official specifically mandated by the Head, considers that the disclosure is necessary for the prevention or investigation of a serious and imminent threat to public security and if that country provides a written assurance, pursuant to an arrangement, agreement or otherwise that the information will be protected in line with the protections set out in this Agreement.

3. If, in accordance with paragraph 1, the Canadian Competent Authority discloses PNR data of an individual who is a citizen of a Member State of the European Union, Canada shall ensure that the Canadian Competent Authority notifies the authorities of that Member State of the disclosure at the earliest appropriate opportunity. Canada shall issue this notification in accordance with agreements and arrangements on law enforcement or information sharing between Canada and that Member State.

4. When transferring analytical information containing PNR data obtained under this Agreement, the safeguards applying to PNR data in this Article shall be respected.

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ARTICLE 21

Method of transfer

The Parties shall ensure that air carriers transfer PNR data to the Canadian Competent Authority exclusively on the basis of the push method and in accordance with the following procedures to be observed by air carriers:

- (a) transfer PNR data by electronic means in compliance with the technical requirements of the Canadian Competent Authority or, in case of technical failure, by any other appropriate means ensuring an appropriate level of data security;
- (b) transfer PNR data using a mutually accepted messaging format;
- (c) transfer PNR data in a secure manner using common protocols required by the Canadian Competent Authority.

ARTICLE 22

Frequency of transfer

1. Canada shall ensure that the Canadian Competent Authority requires an air carrier to transfer the PNR data:

(a) on a scheduled basis with the earliest point being up to 72 hours before scheduled departure; and

(b) a maximum of five times, for a particular flight.

2. Canada shall ensure that the Canadian Competent Authority informs air carriers of the specified times for the transfers.

3. In specific cases where there is an indication that additional access is necessary to respond to a specific threat related to the purposes set out in Article 3, the Canadian Competent Authority may require an air carrier to provide PNR data prior to, between or after the scheduled transfers. In exercising this discretion, Canada shall act judiciously and proportionately and require the use of the method of transfer described in Article 21.

IMPLEMENTING AND FINAL PROVISIONS

ARTICLE 23

PNR data received prior to the entry into force of this Agreement

Canada shall apply the terms of this Agreement to all PNR data that it holds at the time this Agreement enters into force.

ARTICLE 24

Cooperation

The respective authorities of Canada and the European Union shall cooperate to pursue the coherence of their PNR data processing regimes in a manner that further enhances the security of citizens of Canada, the European Union and elsewhere.

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ARTICLE 25

Non-derogation

This Agreement shall not be construed to derogate from any obligation between Canada and Member States of the European Union or third countries to make or respond to an assistance request under a mutual assistance instrument.

ARTICLE 26

Dispute resolution and suspension

1. The Parties shall resolve any dispute arising from the interpretation, application or implementation of this Agreement through diplomatic channels with a view to reaching a mutually acceptable resolution, including providing an opportunity for either Party to comply within a reasonable time.
2. If the Parties are unable to resolve the dispute, either Party may suspend the application of this Agreement by notification in writing to the other Party, through diplomatic channels. The suspension shall come into effect 120 days from the date of such notification, unless the Parties jointly decide otherwise.
3. The Party that suspends the application of this Agreement shall cease the suspension as soon as the dispute is resolved to the satisfaction of both Parties. The suspending Party shall notify the other Party in writing of the date that the application of this Agreement will resume.
4. Canada shall continue to apply the terms of this Agreement to all PNR data obtained before any suspension of this Agreement.

ARTICLE 27

Consultation, review, evaluation and amendments

1. The Parties shall advise each other of any measure that is to be enacted and that may affect this Agreement.
2. The Parties shall jointly review the implementation of this Agreement one year after its entry into force, at regular intervals thereafter, and additionally if requested by either Party and jointly decided. In conducting these reviews, the Parties shall pay special attention to the necessity and proportionality of processing and retaining PNR data for each of the purposes set out in Article 3. The Parties agree that the joint review shall in particular look into the exceptional retention of PNR data according to Article 16(3). The joint reviews shall also include the examination of how the Canadian Competent Authority has ensured that the pre-established models, criteria and databases referred to in Article 15 are reliable, relevant and current, taking into account statistical data.
3. The Parties shall jointly evaluate this Agreement four years after its entry into force.
4. The Parties shall decide in advance of on the modalities of the joint review and shall communicate to each other the composition of their respective teams. For the purpose of such review, the European Union shall be represented by the European Commission. The teams shall include relevant experts on data protection and law enforcement. Subject to applicable laws, any participants in a review shall be required to respect the confidentiality of the discussions and to have appropriate security clearances. For the purposes of any review, Canada shall provide upon request access to relevant documentation, statistics, systems and personnel.

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5. Following each joint review, the European Commission shall present a report to the European Parliament and to the Council of the European Union. Canada shall be given an opportunity to provide written comments that are attached to the report.

6. A Party proposing an amendment to this Agreement shall do so in writing.

ARTICLE 28

Termination

1. A Party may terminate this Agreement at any time by giving notice to the other Party through diplomatic channels of its intention to terminate this Agreement. This Agreement shall be terminated 120 days after the receipt of the notification by the other Party.

2. Canada shall continue to apply the terms of this Agreement to all PNR data obtained before the termination of this Agreement.

ARTICLE 29

Duration

1. Subject to paragraph 2, this Agreement shall remain in force for a period of seven years from the date of entry into force.

2. At the end of every seven-year period, this Agreement shall be automatically renewed for an additional seven-year period, unless one Party gives notice to the other Party, in writing through diplomatic channels, at least six months before the expiry of the seven-year period, that it does not intend to renew this Agreement.

3. Canada shall continue to apply the terms of this Agreement to all PNR data obtained before the termination of this Agreement.

ARTICLE 30

Territorial application

1. This Agreement shall apply to the territory of the European Union in accordance with the Treaty on European Union and the Treaty on the Functioning of the European Union and to the territory of Canada.

2. By the date of entry into force of this Agreement, the European Union shall notify Canada of the Member States to whose territories this Agreement applies. It subsequently may, at any time, notify any changes thereto.

ARTICLE 31

Final Provisions

1. Each Party shall notify the other Party in writing when it has completed the procedures necessary for the entry into force of this Agreement. This Agreement shall enter into force on the date of the second of these notifications.

2. Canada shall notify the European Commission before the entry into force of this Agreement through diplomatic channels of the identity of the following authorities:

(a) the Canadian Competent Authority referred to in Article 2(1)(d);

(b) the independent public authorities as referred to in Article 10 and Article 14(1); and

(c) the independent administrative body as referred to in Article 17.

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Canada shall notify without delay any changes thereto.

3. The European Union shall publish the information referred to in paragraph 2 in the Official Journal of the European Union.

4. This Agreement replaces any prior arrangements on the processing of advance passenger information and PNR data, including the Agreement between the Government of Canada and the European Community on the Processing of Advance Passenger Information and Passenger Name Record Data, 22 March 2006.

Done in duplicate at, on, in the Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish languages, each text being equally authentic. In case of divergence between the language versions, the English and French versions shall prevail.

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ANNEX

Passenger Name Record data elements referred to in Article 2(b)

1. PNR locator code
 2. Date of reservation / issue of ticket
 3. Date(s) of intended travel
 4. Name(s)
 5. Frequent flyer information (the designator of the airline or vendor that administers the program), frequent flyer traveller number, membership level, tier description and alliance code)
 6. Other names on PNR, including number of travellers on PNR
 7. Address, telephone number and electronic contact information of the passenger, the persons who made the flight reservation for the passenger, persons through whom an air passenger may be contacted and persons who are to be informed in the event of an emergency
 8. All available payment / billing information (not including other transaction details linked to a credit card or account and not connected to the travel transaction)
 9. Travel itinerary for specific PNR
 10. Travel agency / travel agent
 11. Code share information
 12. Split / divided information
 13. Travel status of passenger (including confirmations and check-in status)
 14. Ticketing information, including ticket number, one way tickets and Automated Ticket Fare Quote
 15. All baggage information
 16. Seat information, including seat number
 17. Other Supplementary Information (OSI), Special Service Information (SSI) and Special Service Request (SSR) information
 18. Any advance passenger information (API) data collected for reservation purposes
 19. All historical changes to the PNR data listed in numbers (1) to (18)
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