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**Opinion 2/2007 on information to passengers
about the transfer of PNR data to US authorities**

**Adopted on 15 February 2007
and
revised and updated on 24 June 2008**

This Working Party was set up under Article 29 of Directive 95/46/EC. It is an independent European advisory body on data protection and privacy. Its tasks are described in Article 30 of Directive 95/46/EC and Article 15 of Directive 2002/58/EC.

The secretariat is provided by Directorate C (Civil Justice, Rights and Citizenship) of the European Commission, Directorate General Justice, Freedom and Security, B-1049 Brussels, Belgium, Office No LX-46 06/80.

Website: http://ec.europa.eu/justice_home/fsj/privacy/index_en.htm

Executive summary

This opinion and its annexes (frequently asked questions and model notices) are aimed at travel agents, airlines, and any other organisations providing travel services to passengers flying to and from the United States of America. This opinion and the annexes update and replace the previous opinion of 30 September 2004 (WP97).

The current legal framework for transferring PNR information to the US authorities is covered by the agreement of July 2007.

There remain obligations on travel agents, airlines and other organisations to provide information to passengers about the processing of their personal information, and this opinion aims to give advice and guidance on who needs to provide what information, how and when.

Information should be provided to passengers when they agree to buy a flight ticket, and when they receive confirmation of this ticket.

The opinion gives advice on providing information by phone, in person and on the internet.

The Art. 29 Working Party has established the model information notices (the annexes to this opinion) to make providing this information easier for organisations, and to make sure the information provided is consistent across the European Union.

The short and very short information notices give passengers summary information about transfers of their data to the US authorities, and how to find out more information.

The longer notice is in the form of frequently asked questions and has more details about the processing. It explains passenger data more widely, before focusing on PNR data. It also includes links to the current agreement and other relevant documents.

Opinion 2/2007 on information to passengers about transfer of PNR data to US authorities

THE WORKING PARTY ON THE PROTECTION OF INDIVIDUALS WITH REGARD TO THE PROCESSING OF PERSONAL DATA

set up by Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995¹,

having regard to Articles 29 and 30 paragraphs 1 (a) and 3 of that Directive,

having regard to its Rules of Procedure and in particular to articles 12 and 14 thereof,

has adopted the present Opinion:

INTRODUCTION

Following the 11 September 2001 attacks, the United States adopted a number of laws and regulations requiring airlines flying into their territory to transfer to the US administration personal data relating to passengers and crew members flying to, from or through the United States of America. In particular, US authorities imposed on airlines the obligation to give the US Department of Homeland Security (DHS) electronic access to passenger data contained in the Passenger Name Record (PNR) for flights to, from, or through the US. Airlines not complying with these requests may face heavy fines and even lose landing rights, as well as seeing their passengers subject to delays on arrival in the United States of America.

A European legal framework allowing airlines to transfer passengers' PNR was put in place by a European Commission Decision of 14 May 2004, accompanied by the International Agreement concluded between the European Union and the United States of America on 28 May 2004. Following the annulment of these two instruments by the European Court of Justice in 2006, this framework has been replaced first by the interim Agreement between the European Union and the United States of America of 16 October 2006 and then by the follow-up Agreement signed on 23 July 2007 by the EU and on 26 July by the US².

The International Agreement is not intended to derogate from or amend legislation of the European Union or its Member States. In particular, Articles 10 and 11 of the Directive impose on Member States an obligation to make sure that the data controller provides the data subject with information regarding the data processing envisaged. The obligation on

¹ OJ L 281 of 23/11/1995, p. 31, available at:
http://europa.eu.int/comm/internal_market/en/media/dataprot/index.htm

² All documents are available at:
http://ec.europa.eu/justice_home/fsj/privacy/thridcountries/index_en.htm

the controller to inform the data subject results thus from national legislation adopted pursuant to the Directive. The Working Party is aware that the obligation to inform the data subject is a responsibility of data controllers, and that it should be carried out in accordance with the national legislation they are subject to.

As the US requests for transfers of PNR data affect all airlines in a similar way, the Working Party considers that there is a real need for coherence in the content of the information that should be provided to passengers and in the time and way in which that information is delivered. For that purpose, the Working Party adopted standard information notices in its Opinion of 30 September 2004 (WP 97), to serve as guidance as regards the information that should be provided to passengers flying between the EU and the USA.

The Working Party now considers it appropriate to address again the issue of information to passengers for two reasons. Firstly, the 2004 passenger notices need to be updated to take account of changes that have occurred since then. Secondly, airlines, travel agents and Computer Reservation Systems are still not providing information to passengers on transatlantic flights about the collection and transfer of their PNR in a consistent and satisfactory way. To tackle this, the Working Party is also providing guidance in this opinion about the way in which this information should be provided.

WHO SHOULD PROVIDE THE INFORMATION?

According to the Directive, the obligation to inform data subjects is placed on the data controller. In the case of PNR this may be an airline or several airlines. The obligation to inform passengers also extends to travel agents or computer reservation systems, as explained below.

Airlines

Passenger data are collected and processed to allow airlines to fulfil their obligation to the passenger to get them to their destination. The airline determines how and why the personal data are processed, and as such is the controller of the data processing. The Working Party therefore considers that the information should be provided primarily by the airline selling the flight ticket.

A particular case where several airlines may be involved is that of code-sharing, where a flight bought with one company is actually operated by a different one. In that case, from a data protection point of view, the Working Party considers that it is the airline that made the reservation and sold the flight ticket that can be considered as determining how and why the data are processed. As such, it should be considered as a data controller and so has a duty to inform the passenger.

Travel agents

According to Member States' commercial legislation, travel agents are not always considered to be acting as representatives of the airlines, but rather as intermediaries between the passenger and the airline. However, that activity of intermediation requires in any case that the passenger should be provided with accurate, clear, and complete information on the conditions of the contract. That includes information on the processing of the passenger's data by US authorities. For the purposes of applying the data protection rules, information from the data controller should be provided before the purchase of the

ticket. Where the ticket is bought from a travel agent, they have an obligation to inform passengers as they are considered to be acting on behalf of the airline in allowing that airline to comply with the obligation it is subject to. The Working Party therefore considers that the information should be provided by the travel agent in those cases where the ticket is bought through them.

Computer reservation systems

It is not generally possible for a passenger to book flights directly via Computer Reservation Systems (CRS), such as Amadeus. However, if this does happen, the same reasoning explained above for travel agents applies to CRSs. They would therefore be under an obligation to inform passengers booking transatlantic flights through them about the collection and transfer of their PNR data.

WHEN SHOULD THE INFORMATION BE PROVIDED?

The Working Party considers that information should be provided to passengers no later than the moment when the passenger gives their agreement to buy the flight ticket.

This is in line with the general principle set out in Article 6 of the Directive, according to which data should be processed fairly and lawfully. The same requirement for fairness is recalled in Article 10 and 11, when referring to information that is necessary, "*having regard to the specific circumstances in which the data are [collected or processed], to guarantee fair processing in respect of the data subject.*"

Even if the transfer of PNR data has become in practice a condition for travelling to the US, passengers are only aware of what that means in terms of the processing of their personal data if the information is given to them before they buy the ticket. The fact that those data will be transferred to US authorities, used and disclosed for purposes different from the original ones and stored for long periods, is a relevant element of the contract of air transport, especially because it entails an interference in passengers' fundamental right to privacy. Making passengers aware of that fact in advance of the conclusion of the contract derives also from the general principle of contractual good faith.

In addition, the information should also be provided after the ticket has been bought, for instance by including it in the confirmation message of the flight reservation or including a leaflet with the ticket when it is delivered. This is necessary to make sure the passenger receives the information in those cases where the booking was made by a third person in their name (for instance, by a secretary).

WHAT INFORMATION SHOULD BE PROVIDED?

The content of the information to be provided includes, in accordance with Articles 10 and 11 of the Directive, the identity of the controller, the purposes of the processing and any further information "[...] in so far as such further information is necessary, having regard to the specific circumstances in which the data are processed, to guarantee fair processing in respect of the data subject".

Determining the content of the information is, like the duty of information itself, the primary responsibility of the airlines as data controller, without prejudice to national legislation that implements Articles 10 and 11 of the Directive, and to powers delegated

to Data Protection Supervisory Authorities to fine-tune the requirements of the duty of information.

However, for the sake of coherence on a Europe-wide basis, the Working Party has established the model information notices to passengers, which are attached as an annex to this opinion³. They are intended to provide guidance to airlines on the information they should provide to passengers in line with the obligations imposed by national legislation that implements the Directive.

The information notices to passengers exist in three versions.

The short version (annex 1) is intended to give passengers summary information about the fact that transfers to US authorities take place, and to offer them the possibility to find out more about the conditions of processing.

The longer version (annex 2) takes the form of frequently asked questions (FAQs) and contains more details about the conditions of processing. This version would be appropriate where bookings are made on the internet or at an office (of the airline or of a travel agent). Where passengers wish to know more about the transfer of their data to US authorities, the note provides them with a link to the international agreement. It also advises them to contact the airlines for more general information about how they handle personal data.

The very short version (annex 3) is intended for phone sales or can be printed on tickets.

The content of these notices has been determined on the basis of the information made available to the Working Party and to the European Commission by US authorities, and in particular is based on the EU-US Agreement of July 2007. The aim of the notices is, therefore, to draw as complete and accurate a picture as possible about the processing of PNR data by US authorities. The notices may need to be subsequently updated on the basis of changes in the information provided to the Working Party and the European Commission by the US authorities on the way they process PNR. The existence of these model notices does not relieve airlines of the obligation to provide passengers with more accurate and complete information, should they possess it.

HOW SHOULD THE INFORMATION BE PROVIDED?

The decision on how the information is provided is the responsibility of those who have the obligation to provide it, namely airlines and travel agents. At any rate, the information must be provided in a way that ensures that passengers are fully aware of the collection and transfer of their PNR data.

To help comply with the obligations under national legislation, the Working Party would like to provide some guidance in this regard.

If the booking is made at a travel agency

Travel agents should provide passengers with a paper version of at least the short passenger notice. If passengers request more information about the transfer of PNR, the agents should provide them with a paper version of the longer passenger notice.

³ Revised and updated on 24 June 2008

If the booking is made by telephone

The very short notice (annex 3) should be read out for the passengers. If they request further information, the airline, travel agent or other organisation should indicate where passengers may access the longer notice on a website or how to get a paper version of the longer notice.

If the booking is made on the internet.

Here, a number of possibilities are available. The short notice should be presented to passengers automatically, without requiring them to look for it. This can be done by posting it on top of the webpage where the personal details of travellers are collected, or by other means, such as pop-up windows. Just making it available on a page that may only be accessed if the passenger performs a positive action (such as clicking at a web link) or including the notice in a general "privacy" section would not satisfy the requirements of national data protection legislation.

On the other hand, the longer notice may be accessed by the passenger performing positive actions, such as clicking on a web link. This web link should be offered in the short notice. At the very least, on a website, the longer notice should have the same level of visibility and accessibility for passengers as general fare and travel conditions.

In line with the provisions of Article 30.1 (a) of the Directive, and to contribute to the uniform application of national data protection legislation adopted to implement the Directive, national data protection supervisory authorities will encourage the use of the passenger notices. They will also monitor compliance by airlines, travel agents and CRSs with their obligation to inform passengers on transatlantic flights about the collection and processing of their PNR data.

Done at Brussels, on 15 February 2007

For the Working Party

The Chairman

Mr. Peter Schaar

Revised and updated

at Brussels, on 24 June 2008

For the Working Party

The Chairman

Mr. Alex Türk

ANNEX I⁴

Short notice for travel between the European Union and the United States

In accordance with an International Agreement between the European Union and the United States, [name of airline] transfers to the US Department of Homeland Security (DHS) certain travel and reservation data (PNR) about passengers flying between the European Union and the United States.

US authorities use this information for preventing and combating terrorism and other transnational serious crimes. These and other data may also be used for checking against lists of passengers raising aviation security concerns.

The information will be retained for fifteen years and may be shared with other authorities. Information related to a specific case or investigation can be kept longer until the case or investigation is archived.

You can get more information on request from your airline or travel agent. *[the airline or travel agent may then provide the information contained in the long version]* , or see the Frequently Asked Questions (FAQ) adopted by the Article 29 Working Party in its opinion 132 (Annex 2) [\[link to WP 132\]](#).

⁴ Revised and updated on 24 June 2008

ANNEX 2⁵

Frequently asked questions regarding the transfer of passenger information to US authorities related to flights between the European Union and the United States

1. What sort of passenger information will be transferred to US authorities?

United States law requires airlines operating flights to, from, or through the United States (US) to provide the US Department of Homeland Security (DHS) with certain passenger data to facilitate safe travel and to guarantee US security by carrying out advance risk assessments of passengers. The passenger data falls into two categories.

- Passenger Name Record (PNR) : This includes a variety of information provided during the booking process or held by airlines or travel agents, such as the passenger's name, contact details, details of the travel itinerary (such as date of travel, origin and destination, seat number, and number of bags) and details of the reservation (such as travel agency and payment information, and meal or wheelchair requests) or other information (such as affiliation with a frequent flier program);
- Advanced Passenger Information (API): this includes mainly information contained on a passenger's passport and is often collected at check-in. This information is provided prior to arrival to frontier control authorities. This is also used to screen passengers against lists of persons believed to pose a threat to aviation security.

These FAQs relate primarily to PNR data as this is regulated in accordance with the International Agreement signed on 26 July 2007 between the European Union and the United States. The European Union will make sure that air carriers comply with these obligations. [Name of the Airline] airline has to comply with these requirements.

For a more detailed explanation of the way DHS handles PNR collected from flights between the European Union (EU) and the US, please refer to the international agreement and the accompanying letter of DHS, which are published in the Official Journal of the European Communities L 204 of 4 August 2007, available here [click here](#).

[hyperlink to page:

http://eur-lex.europa.eu/LexUriServ/site/en/oj/2007/l_204/l_20420070804en00180025.pdf

[link to be edited to the different linguistic versions of the OJ as this notice gets translated]

2. Why is my Passenger Name Record being transferred to US DHS before I travel to, from, or through the United States?

DHS uses passenger name records (PNR) for flights between the EU and the US for the purposes of preventing and combating:

- terrorism and related crimes;
- other serious crimes, including organised crime, that are transnational in nature; and
- flight from warrants or custody for crimes described above.

⁵ Revised and updated on 24 June 2008

PNR may be used where necessary for the protection of the vital interests of an individual, or in any criminal judicial proceedings, or as otherwise required by law.

3. What is the legal framework for the transfer of PNR data?

By legal statute (title 49, United States Code, section 44909(c)(3)) and its implementing (interim) regulations (title 19, Code of Federal Regulations, section 122.49b), each air carrier operating passenger flights in foreign air transportation to or from the US must provide DHS with PNR data collected and contained in the air carrier's reservation and/or departure control systems.

DHS explained in a letter of 26 July 2007 how it handles the collection, use and storage of PNR.

(http://eur-lex.europa.eu/LexUriServ/site/en/oj/2007/l_204/l_20420070804en00180025.pdf)

These conditions concern, in particular:

- the purposes for which PNR is used;
- sharing the PNR with other parties;
- the types of information collected;
- how you can access your data and make a complaint;
- enforcement;
- official notice to the travelling public;
- storage time;
- transmission of PNR;
- reciprocity; and
- review of the agreement.

On the basis of these assurances by DHS, the European Union and the United States concluded an international agreement signed in July 2007, and the European Union will now make sure that air carriers make available PNR data as required by DHS.

4. Is sensitive data included in the PNR data transfer?

Certain PNR data identified as "sensitive" may be included in the PNR when it is transferred to DHS. Such sensitive PNR data would include certain information revealing the passenger's racial or ethnic origin, political opinion, religion, health status or sexual preference. DHS has undertaken that it will not use any sensitive PNR data that it receives and has put in place an automated filtering programme so that sensitive PNR data is not used in principle.

However, sensitive PNR data may be used in exceptional cases, such as where the life of an individual could be imperilled or is in serious danger.

5. Will my PNR data be shared with other authorities?

DHS may share PNR data with other US government authorities that have counter-terrorism, law enforcement or public security functions, for the purposes of preventing and combating terrorism, transnational crime and public security (including threats, flights, individuals and routes of concern).

DHS may share PNR data with government authorities in third countries, but only after they have considered the intended use of the information and the ability to protect it.

Unless it is an emergency, any exchanges of data require data protection measures to be incorporated that are comparable to those set out in the international agreement between the EU and the US.

6. How long will DHS store my PNR data?

DHS will keep PNR data for fifteen years. Information related to a specific case or investigation can be kept longer until the case or investigation is archived.

DHS will keep a log of access to any sensitive PNR data and will delete the data within 30 days once the purpose for which it has been accessed is accomplished, and it is not required by law to keep it for longer. DHS will provide notice, normally within 48 hours, to the European Commission (DG JLS) that sensitive data has been accessed.

7. Can I request a copy of my PNR data that is collected by DHS, and can I request that corrections be made to my PNR?

Any passenger, regardless of their nationality or country of residence, may request information about their PNR and have inaccuracies corrected.

You can find information on DHS policies on access to records and personal information at http://www.dhs.gov/xfoia/editorial_0579.shtm. For more information, please contact the DHS Privacy Office's FOIA Program:

FOIA
The Privacy Office
U.S. Department of Homeland Security
245 Murray Drive SW
STOP-0550
Washington, DC 20528-0550
Toll-free: +1-866-431-0486
Phone: +1-703-235-0790
Fax: +1-703-235-0443
Email: foia@dhs.gov

DHS policies on redress can be found at www.dhs.gov/trip.

If you need any help with making your request, you can contact your national data protection authority. For contact details of the DPA in your country, please [click here](#). [Link to Europa web page with DPA addresses: http://ec.europa.eu/justice_home/fsj/privacy/nationalcomm/index_en.htm]

8. How can I get more information?

You can get more information about how your personal data is handled by contacting your airline.

For [Airline], the contact details are as follows.

[...]

ANNEX 3

Very short notice for phone sales or tickets

Applicable laws require that your personal information will be made available to competent authorities in and outside the EU. Further information is available on our website.