COUNCIL OF
THE EUROPEAN UNION

The Presidency

Brussels, 23 July 2007

Secretary Michael Chertoff
U.S. Department for Homeland Security
Washington DC 20528

Dear Secretary,

Thank you very much for your letter to the Council Presidency and the Commission explaining how DHS handles PNR data.

The assurances explained in your letter provided to the European Union allow the European Union to deem, for the purposes of the international agreement signed between the United States and European Union on the processing and transfer of PNR in July 2007 that DHS ensures an adequate level of data protection.

Based on this finding, the EU will take all necessary steps to discourage international organisations or third countries from interfering with any transfers of EU PNR to the United States. The EU and its Member States will also encourage their competent authorities to provide analytical information flowing from PNR data to DHS and other US authorities concerned.

We look forward to working with you and the aviation industry to ensure that passengers are informed about how governments may use their information.

Yours sincerely,

Luís Amado
President of the Council

175 Rue de la Loi

DECLARATION ON BEHALF OF THE EUROPEAN UNION TO THE AGREEMENT BETWEEN THE EUROPEAN UNION AND THE UNITED STATES OF AMERICA ON THE PROCESSING AND TRANSFER OF PASSENGER NAME RECORD (PNR) DATA BY AIR CARRIERS TO THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY (DHS) (2007 PNR AGREEMENT)

"This Agreement, while not derogating from or amending legislation of the EU or its Member States, will, pending its entry into force, be implemented provisionally by Member States in good faith, in the framework of their existing national laws."

Secretary
U.S. Department of Homeland Security
Washington, DC 20528

July 26, 2007

Mr. Luis Amado
President of the Council of the European Union
175 Rue de la Loi
1048 Brussels Belgium

Dear President of the Council of the European Union,

In response to the inquiry of the European Union and to reiterate the importance that the United States government places on the protection of individual privacy, this letter is intended to explain how the United States Department of Homeland Security (DHS) handles the collection, use and storage of Passenger Name Records (PNR). None of the policies articulated herein create or confer any right or benefit on any person or party, private or public, nor any remedy other than that specified in the Agreement between the EU and the U.S. on the processing and transfer of PNR by air carriers to DHS signed in July 2007 (the "Agreement"). Instead, this letter provides the assurances and reflects the policies which DHS applies to PNR data derived from flights between the U.S. and European Union (EU PNR) under U.S. law.

I. Purpose for which PNR is used: DHS uses EU PNR strictly for the purpose of preventing and combating: (1) terrorism and related crimes; (2) other serious crimes, including organized crime, that are transnational in nature; and (3) flight from warrants or custody for crimes described above. PNR may be used where necessary for the protection of the vital interests of the data subject or other persons, or in any criminal judicial proceedings, or as otherwise required by law. DHS will advise the EU regarding the passage of any U.S. legislation which materially affects the statements made in this letter.

II. Sharing of PNR:

DHS shares EU PNR data only for the purposes named in article I.

DHS treats EU PNR data as sensitive and confidential in accordance with U.S. laws and, at its discretion, provides PNR data only to other domestic government authorities with law enforcement, public security, or counterterrorism functions, in support of counterterrorism, transnational crime and public security related cases (including threats, flights, individuals and routes of concern) they are examining or investigating, according to law, and pursuant to written understandings and U.S. law on the exchange of information between U.S. government authorities. Access shall be strictly and carefully limited to the cases described above in

proportion to the nature of the case.

EU PNR data is only exchanged with other government authorities in third countries after consideration of the recipient's intended use(s) and ability to protect the information. Apart from emergency circumstances, any such exchange of data occurs pursuant to express understandings between the parties that incorporate data privacy protections comparable to those applied to EU PNR by DHS, as described in the second paragraph of this article.

III. Types of Information Collected:

Most data elements contained in PNR data can be obtained by DHS upon examining an individual's airline ticket and other travel documents pursuant to its normal border control authority, but the ability to receive this data electronically significantly enhances DHS's ability to focus its resources on high risk concerns, thereby facilitating and safeguarding bona fide travel.

Types of EU PNR Collected:

1. PNR record locator code,
2. Date of reservation/ issue of ticket
3. Date(s) of intended travel
4. Name(s)
5. Available frequent flier and benefit information (i.e., free tickets, upgrades, etc)
6. Other names on PNR, including number of travelers on PNR
7. All available contact information (including originator information)
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. General remarks including OSI, SSI and SSR information
18. Any collected APIS information
19. All historical changes to the PNR listed in numbers 1 to 18

To the extent that sensitive EU PNR data (i.e. personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, and data concerning the health or sex life of the individual), as specified by the PNR codes and terms which DHS has identified in consultation with the European Commission, are included in the above types of EU PNR data, DHS employs an automated system which filters those sensitive

PNR codes and terms and does not use this information. Unless the data is accessed for an exceptional case, as described in the next paragraph, DHS promptly deletes the sensitive EU PNR data.

If necessary in an exceptional case where the life of a data subject or of others could be imperilled or seriously impaired DHS officials may require and use information in EU PNR other than those listed above, including sensitive data. In that event, DHS will maintain a log of access to any sensitive data in EU PNR and will delete the data within 30 days once the purpose for which it has been accessed is accomplished and its retention is not required by law. DHS will provide notice normally within 48 hours to the European Commission (DG JLS) that such data, including sensitive data, has been accessed.

IV. Access and Redress: DHS has made a policy decision to extend administrative Privacy Act protections to PNR data stored in the ATS regardless of the nationality or country of residence of the data subject, including data that relates to European citizens. Consistent with U.S. law, DHS also maintains a system accessible by individuals, regardless of their nationality or country of residence, for providing redress to persons seeking information about or correction of PNR. These policies are accessible on the DHS website, www.dhs.gov.

Furthermore, PNR furnished by or on behalf of an individual shall be disclosed to the individual in accordance with the U. S. Privacy Act and the U. S. Freedom of Information Act (FOIA). FOIA permits any person (regardless of nationality or country of residence) access to a U.S. federal agency's records, except to the extent such records (or a portion thereof) are protected from disclosure by an applicable exemption under the FOIA. DHS does not disclose PNR data to the public, except to the data subjects or their agents in accordance with U.S. law. Requests for access to personally identifiable information contained in PNR that was provided by the requestor may be submitted to the FOIA/PA Unit, Office of Field Operations, U.S. Customs and Border Protection, Room 5.5-C, 1300 Pennsylvania Avenue, NW, Washington, DC 20229 (phone: (202) 344-1850 and fax: (202) 344-2791).

In certain exceptional circumstances, DHS may exercise its authority under FOIA to deny or postpone disclosure of all or part of the PNR record to a first part requester, pursuant to Title 5, United States Code, Section 552(b). Under FOIA any requester has the authority to administratively and judicially challenge DHS's decision to withhold information.

V. Enforcement: Administrative, civil, and criminal enforcement measures are available under U.S. law for violations of U.S. privacy rules and unauthorized disclosure of U.S. records. Relevant provisions include but are not limited to Title 18, United States Code, Sections 641 and 1030 and Title 19, Code of Federal Regulations, Section 103.34.

VI. Notice: DHS has provided information to the travelling public about its processing of PNR data through publications in the *Federal Register* and on its website. DHS further will provide to airlines a form of notice concerning PNR collection and redress practices to be available for public display. DHS and the EU will work with interested parties in the aviation industry to promote greater visibility of this notice.

VII. Data retention: DHS retains EU PNR data in an active analytical database for seven years, after which time the data will be moved to dormant, non-operational status. Data in dormant status will be retained for eight years and may be accessed only with approval of a senior DHS official designated by the Secretary of Homeland Security and only in response to an identifiable case, threat, or risk. We expect that EU PNR data shall be deleted at the end of this period; questions of whether and when to destroy PNR data collected in accordance with this letter will be addressed by DHS and the EU as part of future discussions. Data that is related to a specific case or investigation may be retained in an active database until the case or investigation is archived. It is DHS' intention to review the effect of these retention rules on operations and investigations based on its experience over the next seven years. DHS will discuss the results of this review with the EU.

The above mentioned retention periods also apply to EU PNR data collected on the basis of the Agreements between the EU and the US, of May 28, 2004 and October 19, 2006.

VIII. Transmission: Given our recent negotiations, you understand that DHS is prepared to move as expeditiously as possible to a "push" system of transmitting PNR from airlines operating flights between the EU and the U.S. to DHS. Thirteen airlines have already adopted this approach. The responsibility for initiating a transition to "push" rests with the carriers, who must make resources available to migrate their systems and work with DHS to comply with DHS's technical requirements. DHS will immediately transition to such a system for the transmission of data by such air carriers no later than January 1, 2008 for all such air carriers that have implemented a system that complies with all DHS technical requirements. For those air carriers that do not implement such a system the current system shall remain in effect until the air carriers have implemented a system that is compatible with DHS technical requirements for the transmission of PNR data. The transition to a "push" system, however, does not confer on airlines any discretion to decide when, how or what data to push. That decision is conferred on DHS by U.S. law.

Under normal circumstances DHS will receive an initial transmission of PNR data 72 hours before a scheduled departure and afterwards will receive updates as necessary to ensure data accuracy. Ensuring that decisions are made based on timely and complete data is among the most essential safeguards for personal data protection and DHS works with individual carriers to build this concept into their push systems. DHS may require PNR prior to 72 hours before the scheduled departure of the flight, when there is an indication that early access is necessary to assist in responding to a specific threat to a flight, set of flights, route, or other circumstances associated with the purposes defined in article I. In exercising this discretion, DHS will act judiciously and with proportionality.

IX. Reciprocity: During our recent negotiations we agreed that DHS expects that it is not being asked to undertake data protection measures in its PNR system that are more stringent than those applied by European authorities for their domestic PNR systems. DHS does not ask European authorities to adopt data protection measures in their PNR systems that are more stringent than those applied by the U.S. for its PNR system. If its expectation is not met, DHS reserves the right to suspend relevant provisions of the DHS letter while conducting consultations with the EU with a view to reaching a prompt and satisfactory resolution. In the event that an airline

passenger information system is implemented in the European Union or in one or more of its Member States that requires air carriers to make available to authorities PNR data for persons whose travel itinerary includes a flight between the U.S. and the European Union, DHS intends, strictly on the basis of reciprocity, to actively promote the cooperation of the airlines within its jurisdiction.

In order to foster police and judicial cooperation, DHS will encourage the transfer of analytical information flowing from PNR data by competent US authorities to police and judicial authorities of the Member States concerned and, where appropriate, to Europol and Eurojust. DHS expects that the EU and its Member States will likewise encourage their competent authorities to provide analytical information flowing from PNR data to DHS and other US authorities concerned.

X. Review: DHS and the EU will periodically review the implementation of the agreement, this letter, U.S. and EU PNR policies and practices and any instances in which sensitive data was accessed, for the purpose of contributing to the effective operation and privacy protection of our practices for processing PNR. In the review, the EU will be represented by the Commissioner for Justice, Freedom and Security, and DHS will be represented by the Secretary of Homeland Security, or by such mutually acceptable official as each may agree to designate. The EU and DHS will mutually determine the detailed modalities of the reviews.

The U.S. will reciprocally seek information about Member State PNR systems as part of this periodic review, and representatives of Member States maintaining PNR systems will be invited to participate in the discussions.

We trust that this explanation has been helpful to you in understanding how we handle EU PNR data.

Sincerely,

Michael Chertoff

Secretary of Homeland Security