



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 25 June 2008 (26.06)
(OR. de,en)**

**10439/2/08
REV 2**

**JAI 314
AUS 12
RELEX 426
DATAPROTECT 40**

"I" ITEM NOTE

from : Presidency

to : Coreper

Subject : Agreement between the European Union and Australia on the processing and transfer of European Union-sourced passenger name record (PNR) data by air carriers to the Australian Customs Service
– Adoption of the Council Decision concerning the signing of the Agreement

1. On 28 February 2008 the Council decided to authorise the Presidency, assisted by the Commission, to open negotiations for an Agreement between the European Union and Australia on the processing and transfer of European Union-sourced passenger name record (PNR) data by air carriers to the Australian competent authorities.
2. Those negotiations have been successful and a draft Agreement has been drawn up. At its meeting of 5 June 2008, the Council established a general approach on this Agreement and on the decision on the signing, on behalf of the European Union, of an Agreement.
3. The following Member States have indicated that, in order for the Council to conclude this agreement, they will have to comply with the requirements of their constitutional procedure in accordance with Article 24(5) TEU: BE, CZ, DE, ES, IE, LV, MT, NL, HU, PL and FI. Some of those Member States have provided the Council Secretariat with a text of a statement. These (...) are set out in Annex II to this note.

4. Austria wishes to make the statement set out in Annex I to this note.
5. Ireland has a parliamentary reservation on the adoption of the draft Council Decision on the signing of the above Agreement.
6. COREPER is therefore requested to invite the Council:
 - subject to the lifting of the above parliamentary reservation by Ireland, to adopt, by way of the written procedure, the Decision on the signing of the above Agreement, as set out in 10002/08 JAI 278 AUS 11 RELEX 377 DATAPROTECT 33 + COR 1(da) + REV 1(fi) + REV 1 COR 1(fi) + REV 2 (hu),
 - to decide that the above Decision, together with the Agreement, as set out in 9946/08 JAI 276 AUS 10 RELEX 370 DATAPROTECT 32 + COR 1(fi) + COR 2(hu) + REV 1(sk) + REV 2(fi) (J/L doc) will be published in the Official Journal, "L" series, in accordance with Article 17(1)(h) of the Council's Rules of Procedure.

STATEMENT BY THE REPUBLIC OF AUSTRIA FOR THE MINUTES

Austria construes the provision on data retention in point 12 of the Annex, in accordance with proportionality, as allowing the retention not of all data supplied under the Agreement, en bloc, but only of those data specifically needing to be retained for the purposes of Article 5(1) in any particular case.

STATEMENTS UNDER ARTICLE 24(5) TEU

Declaration by Malta

In accordance with Article 24(5) of the Treaty on European Union, Malta states that it is necessary for it to comply with the requirements of its constitutional procedure, namely, to fulfil domestic legislative requirements, before it may be bound by the Agreement between the European Union and Australia on the processing and transfer of PNR data by air carriers.

Statement by the Federal Republic of Germany

Under Article 24(5) of the Treaty on European Union, the Agreement between the European Union and Australia on the processing and transfer of European Union-sourced passenger name record (PNR) data by air carriers to the Australian Customs Service will not become binding upon Germany until Germany's constitutional procedure in this respect has been completed and completion has been notified to the Council of the European Union.

Until completion of that constitutional procedure has been notified, the Agreement will be provisionally applied in Germany in accordance with domestic law. Australia will be formally notified of this, when the Agreement is signed, by the European Union representative, by means of the declaration in the Annex to 9508/1/08 REV 1 concerning provisional implementation by Member States.

Statement by the Republic of Poland

The Republic of Poland states that the Agreement shall become binding on it and shall be applied provisionally from the date of conclusion of its internal constitutional procedures.

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