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**I/A-PUNKT-VERMERK**

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der Gruppe "Information"  
für den AStV (2. Teil)/Rat

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Nr. Vordokument: 6447/08 INF 18 API 6 JUR 61

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Betr.: Zugang der Öffentlichkeit zu Dokumenten  
– Zweitantrag Nr. 02/c/01/08 von Herrn Ottavio MARZOCCHI

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Die Delegationen erhalten als Anlage den Entwurf einer Antwort des Rates auf den Zweitantrag Nr. 02/c/01/08 von Herrn Ottavio MARZOCCHI, wie er sich aus der Prüfung durch die Gruppe "Information" in ihrer Sitzung vom 15. April 2008 ergeben hat.

Die dänische, die slowenische, die finnische und die schwedische Delegation erklärten, dass sie gegen den Antwortentwurf stimmen werden.

Ferner wurden die folgenden Erklärungen abgegeben:

Von der slowenischen Delegation: "Durch die Verbreitung von personenbezogenen Daten von im Rahmen der Ausübung ihres Berufs handelnden Beamten würde der Schutz der Privatsphäre und der Integrität des Einzelnen im Sinne des Artikels 4 Absatz 1 Buchstabe b der Verordnung nicht beeinträchtigt. Die slowenische Delegation ist der Ansicht, dass eine solche Verbreitung den Schutz der Privatsphäre und der Integrität der betreffenden Personen nicht beeinträchtigen kann, da sich diese Informationen nicht auf ihr Privatleben, sondern auf ihr Berufs- bzw. Arbeitsleben beziehen. Des Weiteren ist die in Artikel 4 Absatz 1 Buchstabe a festgelegte Ausnahmeregelung betreffend den Schutz des öffentlichen Interesses im Hinblick auf die internationalen Beziehungen unseres Erachtens in zu großem Umfang angewendet worden."

Von der finnischen Delegation: "Die Verbreitung von personenbezogenen Daten von im Rahmen der Ausübung ihres Berufs handelnden Beamten würde den Schutz der Privatsphäre und der Integrität des Einzelnen im Sinne des Artikels 4 Absatz 1 Buchstabe b der Verordnung nicht beeinträchtigen. Des Weiteren ist die in Artikel 4 Absatz 1 Buchstabe a festgelegte Ausnahmeregelung betreffend den Schutz des öffentlichen Interesses im Hinblick auf die internationalen Beziehungen unseres Erachtens in zu großem Umfang angewendet worden."

Von der schwedischen Delegation: "Der Zugang der Öffentlichkeit zu Dokumenten kann nur unter Verweis auf die Bestimmungen der Verordnung 1049/2001 verweigert werden. Die Verbreitung der Namen von im Rahmen der Ausübung ihres Berufs handelnden Beamten würde in den meisten Fällen den Schutz der Privatsphäre oder der Integrität der beteiligten Personen nicht beeinträchtigen. Des Weiteren kann die Frage gestellt werden, wie die Verbreitung von Namen von EU-Beamten den Schutz des öffentlichen Interesses im Hinblick auf die internationalen Beziehungen beeinträchtigen könnte. Zudem könnten bei einigen der Dokumente, bei denen der Antrag auf Zugang gestellt wurde, mehr Informationen freigegeben werden, ohne dass der Schutz des öffentlichen Interesses im Hinblick auf die internationalen Beziehungen beeinträchtigt würde."

Der Ausschuss der Ständigen Vertreter wird daher ersucht, dem Rat vorzuschlagen, dass er auf seiner nächsten Tagung

- den in der Anlage enthaltenen Antwortentwurf – gegen die Stimmen der dänischen, der slowenischen, der finnischen und der schwedischen Delegation – als A-Punkt annimmt und
- beschließt, das Abstimmungsergebnis zu veröffentlichen.

Die Anlage liegt nur in englischer Sprache vor.

**DRAFT**

**REPLY ADOPTED BY THE COUNCIL ON .....**  
**TO CONFIRMATORY APPLICATION 02/c/01/08**  
**made by Mr Ottavio MARZOCCHI to the Council**  
**by e-mail on 4 February 2008,**  
**registered by the General Secretariat of the Council on 5 February 2008,**  
**pursuant to Article 7(2) of Regulation (EC) No 1049/2001,**  
**for public access to documents**

The Council has considered the application under Regulation (EC) No 1049/2001 (OJ L 145 of 31.5.2001, p. 43) and Annex II to the Council's Rules of Procedure (Council Decision 2006/683/EC, Euratom - OJ L 285 of 16.10.2006, p. 47) and has come to the following conclusions:

1. The applicant requested public access to:
  - a) all documents related to the negotiations of the 2007 Agreement between the European Union and the United States of America on the processing and transfer of passenger name record (PNR) by air carriers to the United States Department of Homeland Security (DHS),
  - b) documents related to the work of the EU-US High Level Contact Group on Data Protection (HLCG);
  - c) the documents related to the confidentiality of the documents of the PNR negotiations, namely documents 12305/07, 12307/07 and 12309/07.

The documents mentioned under points a) and b) are listed in the tables at annexes I and II.

2. Owing to the large number of documents related to the application and taking into account the numerous consultations, the initial application could not be treated within the deadlines laid down in Articles 7(1) and 7(3) of the Regulation. By letter of 2 October 2007, the General Secretariat proposed to extend the time limit to reply to the application in accordance with Article 6(3) of the Regulation 1049/2001.

3. In its reply dated 16 January 2008, the General Secretariat :

a) fully released

- the following documents concerning the PNR agreement: 11, 16, 17, 21, 23, 61, 62, 63, 67, 72, 73, 75, 76, 95, 96, and 97 as indicated in the table at annex I;

as well as

- the following documents relating to the work of the High Level Contact Group on Data Protection: 12, 13, 14, 25, 31, 32 and 33 as indicated in the table at annex II;

b) granted partial access to

- another four documents on the PNR agreement, i.e. documents 15, 22, 69 and 79 as indicated in the table at annex I,

and to

- one document concerning the work of the High Level Contact Group on Data Protection, i.e. document 11 as indicated in the table at annex II.

As regards document 22 on the PNR agreement, public access was denied under Article 4(1) (a), third indent, of Regulation 1049/2001 (protection of the public interest as regards international relations), to those parts which contain opinions and assessments with a bearing on the current and future negotiations between the European Union and the United States, and which, if disclosed, could prejudice the relations between the two parties.

With regard to documents 15, 69 and 79 on the PNR agreement and document 11 relating to the work of the EU-US High Level Contact Group on Data Protection, public access was denied, pursuant to Article 4 (1) (b) of the Regulation (protection of privacy and the integrity of the individual), to those parts which contain personal data.

c) Finally, the General Secretariat refused to grant public access to the remaining documents mentioned in the tables at annexes I and II and the documents mentioned under point 1 c) pursuant to Article 4(1)(a), third indent, of the Regulation (protection of the public interest with regard to international relations).

4. The applicant filed a confirmatory application on 4 February 2008, requesting public access to all documents identified by the General Secretariat, which have not been fully released to the public, and to any other document that it could have failed to identify.

The applicant's arguments can be summarised as follows:

- a) Firstly, the applicant would like to have a clarification on the following issues:
- in the applicant's view, the CD-ROM and the letter received from the General Secretariat *"do not seem to match completely"*;
  - he would like to know the Council reference numbers in the public register of Council documents corresponding to the documents identified by the General Secretariat;
  - the applicant considers that the number of documents identified by the General Secretariat in the initial phase is *"extremely low"* and asks the Council to verify the list of documents related to the PNR agreement and to the HLCCG.;
- b) Secondly, the applicant believes that, with regard to the General Secretariat's refusal to grant access to parts of certain documents pursuant to Article 4(1)(b) of the Regulation (protection of privacy and integrity of the individual), *"the Council has not taken into proper consideration the fact that the names of the persons could for instance be released, notably as they are carrying official functions"*. In this respect, the applicant refers to *"the fact that the Court of Justice has recently clarified the relation between access to documents and privacy"*;

- c) Thirdly, the applicant has doubts about the legitimacy of the wide application by the General Secretariat of the exception indicated in Article 4(1)(a), third indent, of the Regulation (protection of the public interest with regard to international relations) as this exception is excluded from "*a public interest test*". In the applicant's view, the exception indicated in Article 4(3) of the Regulation (protection of the institution's decision-making process) could be applied instead.

Furthermore, the applicant would like to know, with respect to the third-party documents identified in the initial phase, whether the General Secretariat has consulted the third party in question pursuant to Article 4(4) of the Regulation;

- d) Finally, the applicant asks the Council to provide access to the documents in question to the Members of the European Parliament, as foreseen by Article 9(7) of the Regulation.

5. The Council has examined the documents on a case-by-case basis in the light of the applicant's arguments and carried out new consultations with the relevant department of its General Secretariat. It has reached the following conclusions.

#### Handling of the request in the initial phase

6. The Council confirms that the content of the CD-ROM received by the applicant in the initial phase corresponds with the text of the letter sent by the General Secretariat. It would however like to clarify that the letter "P" as mentioned in the tables at annex to the GSC's letter was used for indicating partial or full access to a document. In the list of documents relating to the PNR Agreement, the documents mentioned under nos. 24 and 92 are the same (document 5997/07). The Council apologizes for these clerical errors.

7. As regards the question concerning the Council reference numbers of the identified documents, the Council would like to clarify that, in principle, all non-sensitive documents<sup>1</sup> submitted to the Council or to one of its preparatory bodies which are to serve as a basis for deliberations, could influence the decision-making process or reflect the progress made on a given subject, are circulated as so-called "ST" (standard) documents and are automatically listed in the Council' electronic register. However, the recording of all internal, preparatory or ephemeral documents on the Council's register could not be reasonably expected as this would place disproportionate administrative burden on the institution. Documents not circulated to Member State delegations — including the documents identified by the Council Secretariat in the present case which do not bear an official number — are kept and filed by the competent Directorates-General.
  
8. The Council confirms that the General Secretariat has identified, in the initial phase, all negotiation documents concerning the PNR agreement and all the documents related to the works of the High Level Contact Group on Data Protection (HLCG) as requested by the applicant.

The Council decided on 22 February 2007 to authorise the Presidency, assisted by the Commission, to open the negotiations on the PNR agreement, which was adopted by the Council on 23 July 2007. The documents identified by the General Secretariat cover this negotiation period.

Regarding the HLCG, the documents identified by the General Secretariat cover the period starting from 8 February 2007, when the preparations for discussions on this matter were initiated, until December 2007. These discussions are still on-going, and the documents produced in 2008 are not included in the list.

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<sup>1</sup> For the purposes of Regulation (EC) No 1049/2001, "sensitive documents" means security-related documents classified as "CONFIDENTIEL", "SECRET" or "TRÈS SECRET/TOP SECRET", pursuant to Article 9(1) of that Regulation.

## Application of the exceptions laid down in Article 4 of the Regulation

9. With regard to the protection of certain parts of documents 15, 69, 79 (PNR Agreement) and document 11 (HLCG) on the basis of Article 4(1)(b) of the Regulation, the Council notes the following: as specified by the General Secretariat, these parts contain names, personal addresses and e-mail addresses, which constitute ‘information relating to an identified or identifiable natural person and thus personal data within the meaning of Article 2(a) of Regulation 45/2001.’<sup>2</sup>

At the time the documents were drawn up, it was not envisaged that this information be put in the public domain. Releasing this information at this stage would equal processing for a different purpose than that for which the data have been collected, which is prohibited under Article 6 of the same Regulation. The General Secretariat did not obtain the explicit consent of the persons concerned to the disclosure of their personal data. Article 4(1)(b) of Regulation (EC) 1049/2001 requires the Council to refuse public access to those parts of the documents that cover privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data.

Contrary to what the applicant claims, the Court of Justice has not yet pronounced on the interpretation of Article 4(1)(b) of the Regulation. In fact, the Council intervenes in Case C-28/08 (Commission v. Bavarian Lager Co. Ltd) in support of the Commission's appeal against the judgment of the Court of First Instance, in which that Court interpreted the relationship between the right of public access to documents and the protection of the privacy and the integrity of the individual, as regards the processing of personal data.

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<sup>2</sup> Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, OJ (2001) L8/1.



10. As regards documents 1 to 10, 12 to 20, 22, 24 to 60, 64 to 66, 68 to 71, 74 and 77 to 94, as specified in the table at Annex I (PNR Agreement), public access was refused in their entirety or partially pursuant to Article 4(1)(a), third indent, of the Regulation. For each of these documents, the following applies:

As specified by the General Secretariat, these documents set out in detail the negotiation positions adopted by the EU and the United States in the course of these negotiations. Release of this information to the public would enable other third countries to assess the measure of willingness of the EU and the US to reach a compromise and could therefore seriously affect the negotiating position of the EU and of the US in current and future negotiations with third countries on similar subjects. For precisely those reasons, the US authorities addressed a letter to the EU Presidency relating to the confidentiality of the negotiation documents (documents 12305/07, 12307/07 and 12309/07).

11. As regards documents 1 to 11, 15 to 24, 26 to 30 and 34 to 36, as specified in the table at Annex II (HLCG), public access was refused in their entirety or partially pursuant to Article 4(1)(a), third indent, of the Regulation. For each of these documents, the following applies:

The High Level Contact Group on Data Protection was set up in November 2006 to discuss information sharing and protection of personal data for law enforcement purposes, as part of a wider reflection on how best to prevent and fight terrorism and serious trans-national crime. This should enable the EU and the US to work more closely together by exchanging information in the field of internal security while ensuring that the protection of personal data and privacy are guaranteed. The discussions started in February 2007 and the works of this High Level Contact Group have not finished yet.

The documents concerned contain a detailed overview of EU and US positions on the common principles on data protection related to the collection or transfer of personally identifiable information for law enforcement purposes.

Given the sensitive content of the documents, the Council considers that their disclosure would be detrimental to the relations between the EU and the US. Such disclosure would hinder the diplomatic efforts being made by the two sides to find constructive solutions in these areas. If the United States had reason to believe that the positions it has taken in meetings not open to the public may be made public unilaterally by the EU side, it would be difficult, if not impossible, to address controversial issues in this format in the future. This would not only breach the mutual confidence in the future negotiations but also, in turn, make it considerably more difficult to reach an agreement between the two sides. This would impair the possibility of the EU to reach agreements with the US in future negotiations on sensitive issues. Therefore, public access to these documents or parts of these documents is not possible pursuant to Article 4(1)(a), third indent, of the Regulation.

#### Privileged access of the applicant to the requested documents

12. As for the applicant's request that privileged access should be considered for Members of the European Parliament, the Council draws the applicant's attention to the fact that an applicant's specific interest in gaining knowledge of the requested documents cannot be taken into account by the institution when assessing a request for public access to documents, given that the purpose of Regulation 1049/2001 is to give the general public a right to access to documents of the institutions and not to lay down rules on privileged access. When the Council releases a document pursuant to Regulation 1049/2001, it is obliged to do so *erga omnes*.<sup>3</sup> Privileged access, such as suggested by the applicant, is therefore not possible.

As regards the request for privileged access by Members of the European Parliament to the documents concerned pursuant to Article 9(7) of Regulation 1049/2001, the Interinstitutional Agreement between the European Parliament and the Council concluded pursuant to this provision<sup>4</sup> applies to the access by certain members/committees of the European Parliament to sensitive documents in the field of CFSP/ESDP. The scope of that interinstitutional agreement does not extend to sensitive documents of the Council in the field of freedom, security and justice.

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<sup>3</sup> Article 10(2) of Annex II to the Council's Rules of Procedure, OJ L 285 of 16.10.2006, p. 63.

<sup>4</sup> Interinstitutional agreement of 20 November 2002 between the European Parliament and the Council concerning access by the European Parliament to sensitive information of the Council in the field of security and defence policy, OJ C 298 of 30.11.2002, p. 1.

13. In the light of the above, and without prejudice to point 14, the Council confirms the General Secretariat's approach in reply to the applicant's initial request. Public access to the documents indicated in points 3 b) and 3 c) and listed in annexes I and II as well as those mentioned under point 1c) must be refused by virtue of Article 4(1)(a), third indent, and Article 4(1)(b) of the Regulation (protection of the public interest with regard to international relations and protection of privacy and the integrity of the individual). With regard to those documents originating from third parties, the Council has not deemed it necessary to conduct any further consultations pursuant to Article 4(4), as it is clear from the examination of the documents in question that they contain sensitive information which should not be disclosed pursuant to Article 4(1)(a), third indent, of the Regulation.

14. Nevertheless, in the light of further internal consultations, the Council has decided:

- a) - to release document 12305/07 concerning the confidentiality of negotiation documents (see point 1c)) in full;
- to grant partial access to documents 12307/07 and 12309/07 (see point 1c)) on the same subject (pages 1 and 2 of each document);
- b) - to release in its entirety document 58 on the PNR agreement (Commission room document DS 590/07 for Coreper of 29/06/2007- see table at Annex I);
- to release parts of the following documents on the PNR agreement (see table at Annex I):
  - \* Nr 12: brief for the Chair of Coreper of 14/03/2007
  - \* Nr 13: brief for the Presidency for EU-US Ministerial Troika of 05/04/2007
  - \* Nr 14: brief for the Presidency for EU-US Summit of 30/04/2007
  - \* Nr 18: note for the Presidency EU-US Summit of 30/04/2007
  - \* Nrs 24 and 92: document 5997/07
  - \* Nr 28: brief for the Chair of Coreper of 10/05/2007
  - \* Nr 35: brief for the Chair of Coreper (informal meeting on 12/06/2007)
  - \* Nr 51: brief for the Chair of Coreper (extraordinary meeting on 12/06/2007)
  - \* Nr 59bis: brief for the Chair of Coreper of 28/06/2007
  - \* Nr 64: e-mail of 05/07/2007
  - \* Nr 78: Commission document - minutes of meeting - 09/01/2007
  - \* Nr 83: brief for the Chair of Coreper of 26/01/2007"
  - \* Nr 93: e-mail of 5 February 2007 (release of the annex which is put in the public domain by the US authorities)

- c) - to release documents 20 and 27 in their entirety on the work of the HLCG (see table at annex II), since these documents have been put in the public domain by the US authorities;
- to release parts of the following documents on the work of the HLCG (see table at Annex II):
  - \* Nr 1: Commission letter of 08/02/2007;
  - \* Nr 5: document on common principles of 05/03/2007;
  - \* Nr 10: e-mail on data protection principles of 21/03/2007;
  - \* Nr 17: interim report (English) of 27/03/2007;
  - \* Nr 18: interim report (German) of 27/03/2007;
  - \* Nr 21: interim report of 04/04/2007;
  - \* Nr 22: e-mail of 10/04/2007;
  - \* Nr 36: document on common principles of 07/12/2007;

The above-mentioned documents and parts of documents are, in the Council's view, no longer covered by any exception of the Regulation.

For the sake of completeness of the file, document 11354/07 concerning the PNR agreement is also attached. This document is already in the public domain.

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## PNR

Ref. No.:	Type of Document	Title - Topic	Date	Originator-Destination	Initial phase
1	E-mail	Revised draft agreement on PNR	22/2/2007	German Presidency- EU negotiation team	<b>total refusal</b>
2	E-mail	Revised draft agreement on PNR	22/2/2007	COM- EU negotiation team	<b>total refusal</b>
3	Document	Draft Agreement between the EU and the USA on transfer of passenger name record (PNR) data by air carriers to the US Department of Homeland Security	22/2/2007	COM- EU negotiation team	<b>total refusal</b>
4	E-mail	PNR negotiations	22/2/2007	German Presidency- US negotiation team	<b>total refusal</b>
5	Document	Agreement between the European Union and the United States of America on transfer of passenger name record (PNR) data by air carriers to the United States Department of Homeland Security	14/2/2007	German Presidency- EU negotiation team	<b>total refusal</b>
6	E-mail	PNR draft agreement	15/2/2007	German Presidency- EU negotiation team	<b>total refusal</b>
7	Document	Draft Undertakings of the US department of homeland security	12/3/2007	German Presidency- EU negotiation team	<b>total refusal</b>
8	E-mail	PNR	12/3/2007	German Presidency- EU negotiation team	<b>total refusal</b>
9	Document	Undertakings of the department of homeland security (DHS)	23/3/2007	German Presidency- EU negotiation team	<b>total refusal</b>
10	E-mail	PNR, New Undertakings	23/3/2007	German Presidency- EU negotiation team	<b>total refusal</b>
11	Letter	PNR	5/3/2007	Ambassador Schönfelder, Germany- Ms Sophie in't Veld, MEP	<b>released</b>
12	Brief for the Chair of Coreper	PNR	14/3/2007	Council Secretariat - Council Presidency	<b>total refusal</b>
13	Brief for the Presidency for EU-US Ministerial Troika	Data protection and data sharing	5/4/2007	Council Secretariat - Council Presidency	<b>total refusal</b>
14	Brief for the Presidency for the EU-US Summit	PNR	30/4/2007	Council Secretariat - Council Presidency	<b>total refusal</b>

<b>Ref. No.:</b>	<b>Type of Document</b>	<b>Title - Topic</b>	<b>Date</b>	<b>Originator-Destination</b>	<b>Initial phase</b>
15	E-mail	PNR: Chertoff interview: "We have an absolute right to get this [additional personal information]	4/4/2007	intra EU negotiation team	<b>partial access</b>
16	Document	Federal Register/Vol. 69, No 185/Notices Transportation Security Administration, System of Records	24/9/2004		<b>released</b>
17	Document	Federal Register/Vol. 69, No 185/Notices Privacy Impact Assessment	24/9/2004		<b>released</b>
18	Note for the attention of the Presidency for the EU-US Summit	PNR	30/4/2007	Council Secretariat - Council Presidency	<b>total refusal</b>
19	Brief for the Chair of Coreper	PNR	10/5/2007	Council Secretariat - Council Presidency	<b>total refusal</b>
20	E-mail	COREPER 10 May 2007 - SWIFT and PNR	10/5/2007	intra Council Secretariat	<b>total refusal</b>
21	Letter	JLS/D-1/2007/D/6877	5/6/2007	Jonathan Faull, COM and Hans-Jürgen Förster, Germany	<b>released</b>
22	Council document: 8282/07	Outcome of the EU-US Ministerial Troika on Justice and Home Affairs held in Berlin on 5 April 2007	16/4/2007	JHA, Council	<b>partial access</b>
23	e-mail	Article 29 Working Party - Workshop on EU approach towards a new passenger data agreement on March 26, 2007 at the European Parliament in Brussels	7/3/2007		<b>released</b>
24	Council document: 5997/07 RESTREINT	Authorisation to open negotiations for an agreement between the EU and the United States of America on the use of passenger name records (PNR) data to prevent and combat terrorism and related crime, and other serious crimes that are transnational in nature, including organised crime	6/2/2007	Council-Member States	<b>total refusal</b>
25	Document	Aviation & Border Security Applications			<b>total refusal</b>
26	E-mail	PNR Examples	9/4/2007	US negotiation team - EU negotiation team	<b>total refusal</b>
27	E-mail	PNR Agreement: New undertakings	2/4/2007	EU negotiation team- US negotiation team	<b>total refusal</b>
28	Brief for the Chair of Coreper	PNR	10/5/2007	Council Secretariat - Council Presidency	<b>total refusal</b>
29	Document	Comments on the proposed agreement and letters		German Presidency-EU negotiation team	<b>total refusal</b>
30	Document	Non-paper für PNR-Besprechung mit KOM	9/1/2007	German Presidency-EU negotiation team	<b>total refusal</b>
31	Mail	Report on EU-US video conference	3/05/2007	intra Council Secretariat	<b>total refusal</b>

<b>Ref. No.:</b>	<b>Type of Document</b>	<b>Title - Topic</b>	<b>Date</b>	<b>Originator-Destination</b>	<b>Initial phase</b>
32	Letter	Passenger Name Record PNR Transition to Scheduled Push	31/5/2007	Letter from AIR FRANCE, BRITISH AIRWAYS, FINNAIR, IBERIA, LUFTHANSA, QANTAS to US Customs and Border Protection	<b>total refusal</b>
33	Document	Draft - Sensitive PNR negotiations		US negotiation team-EU negotiation team	<b>total refusal</b>
34	E-mail	Texts for tomorrow's PNR negotiations	7/6/2007	intra EU negotiation team	<b>total refusal</b>
35	Brief for the Chair of Coreper	PNR	12/6/2007	Council Secretariat - Council Presidency	<b>total refusal</b>
36	E-mailed document	Comments on Undertakings of the department of homeland security (DHS)	2/4/2007	EU negotiation team- US negotiation team	<b>total refusal</b>
37	Document	Comments on Undertakings of the department of homeland security (DHS)	23/3/2007	EU negotiation team- US negotiation team	<b>total refusal</b>
38	Note au Dossier	Déjeuner du SG/HR avec Franco Frattini (6 juin 2007)	6/6/2007	intra Council Secretariat	<b>total refusal</b>
39	E-mail	10 June - Video Conference on an EU-US agreement on PNR - vision from Washington	11/6/2007	intra EU negotiation team	<b>total refusal</b>
40	Document	Draft PNR Agreement		US negotiation team-EU negotiation team	<b>total refusal</b>
41	E-mail	PNR	7/6/2007	intra EU negotiation team	<b>total refusal</b>
42	E-mail	Draft agreement US PNR	13/6/2007	intra EU negotiation team	<b>total refusal</b>
43	E-mail	Draft agreement US PNR	13/6/2007	intra EU negotiation team	<b>total refusal</b>
44	E-mail	Draft agreement US PNR	13/6/2007	intra EU negotiation team	<b>total refusal</b>
45	Document	Summary of PNR lunch discussion		intra Council Secretariat	<b>total refusal</b>
46	E-mail	Draft agreement US PNR	14/6/2007	intra EU negotiation team	<b>total refusal</b>
47	E-mail	Draft agreement US PNR	14/6/2007	intra EU negotiation team	<b>total refusal</b>
48	E-mail	Accord PNR	14/6/2007	intra EU negotiation team	<b>total refusal</b>
49	Document	Draft - Sensitive PNR negotiations - Law enforcement sensitive not for public use or dissemination		intra EU negotiation team	<b>total refusal</b>
50	E-mail	US doc	14/6/2007	intra EU negotiation team	<b>total refusal</b>

Ref. No.:	Type of Document	Title - Topic	Date	Originator-Destination	Initial phase
51	Brief for the Chair of Coreper	PNR	12/6/2007	Council Secretariat - Council Presidency	<b>total refusal</b>
51a	Document	Draft PNR Agreement	14/06/07	EU negotiation team - US negotiation team	<b>total refusal</b>
52	E-mail	Materials for Secretary Chertoff call with Vice President Frattini and Minister Schaeuble	21/6/2007	intra EU negotiation team	<b>total refusal</b>
53	E-mail	report PNR videoconference		intra Council Secretariat	<b>total refusal</b>
54	Document	Draft-Sensitive PNR negotiations-Law enforcement sensitive not for public use or dissemination	6/8/2007	EU negotiation team - US negotiation team	<b>total refusal</b>
55	E-mail	Draft US-EU PNR Letter-29 June 9 PM Joint Draft (2)	27/6/2007	EU negotiation team - US negotiation team	<b>total refusal</b>
56	E-mail	Draft US-EU PNR Letter-26 June 9 PM Joint Draft (2)	27/6/2007	EU negotiation team - US negotiation team	<b>total refusal</b>
57	E-mail	Draft US-EU PNR Letter-29 June 9 PM Joint Draft (2)	28/6/2007	US negotiation team - EU negotiation team	<b>total refusal</b>
58	Room Document DS 590/07	Commission Room Document on PNR for Coreper	29/6/2007	Commission	<b>total refusal</b>
59	E-mails	070626_Draft US-EU PNR Letter - 26 June 9 PM Joint Draft (2)	28/6/2007	US negotiation team - EU negotiation team	<b>total refusal</b>
59bis	Brief for the Chair of Coreper	PNR	28/6/2007	Council Secretariat - Council Presidency	<b>total refusal</b>
60	E-mail	070626_Draft US-EU PNR Letter - 26 June 9 PM Joint Draft (2)	28/6/2007	intra EU negotiation team	<b>total refusal</b>
61	E-mail	PNR - documents initialed also by VP Frattini	29/6/2007	intra EU negotiation team	<b>released</b>
62	Letter	Letter to Mr. Hustinx: Response to letter of 27 June 2007 (ref. C2007-0351)	3/7/2007	Jonathan Faull Commission	<b>released</b>
63	Document	Frequently asked questions		Commission	<b>released</b>
64	E-mail	PNR	5/7/2007	intra EU negotiation team	<b>total refusal</b>
65	E-mail	PNR urgent	12/7/2007	intra EU negotiation team	<b>total refusal</b>
66	E-mail	PNR draft Council Decision on signature	12/7/2007	intra EU negotiation team	<b>total refusal</b>
67	Council Document: 11304/07	Processing and transfer of passenger name record data by air carriers to the United States Department of Homeland Security - "PNR"	28/6/2007	Presidency- Member States	<b>released</b>
68	E-mail	PNR urgent	12/7/2007	US negotiation team- EU negotiation team	<b>total refusal</b>



Ref. No.:	Type of Document	Title - Topic	Date	Originator-Destination	Initial phase
69	E-mail	PNR urgent	12/7/2007	Council Secretariat - Member States	<b>partial access</b>
70	E-mail	PNR	16/7/2007	US negotiation team - EU negotiation team	<b>total refusal</b>
71	E-mail	PNR	17/7/2007	US negotiation team - EU negotiation team	<b>total refusal</b>
72	Council Document: 11493/07	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) -Adoption of the Council Decision concerning the signature of the Agreement	18/7/2007	Presidency- Member States	<b>released</b>
73	Letter	Explaining how DHS handles PNR data	23/7/2007	Luis Amado, President of the Council - DHS Secretary Chertoff	<b>released</b>
74	E-mail	PNR	18/7/2007	intra Council Secretariat	<b>total refusal</b>
75	Council Document: 11580/1/06 REV 1	Letter of Mr Borrell on the judgment of the Court of Justice of 30 May 2006 in joint cases C-317/04 and C-318/04 concerning "Passenger Name Record" = Approval of a reply * * Item on which a procedural decision may be adopted by the Coreper pursuant to Article 19 (7)(k) of the Council's Rules of Procedure.	18/7/2007	Council Secretariat - Member States	<b>released</b>
76	Council Document: 12015/07	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) – Adoption of the Council Decision concerning the signature of the Agreement	20/7/2007	Presidency- Member States	<b>released</b>
77	Council Document 5052/07 RESTREINT	Rec from the COM to the Council to authorise opening of negotiations for an agreement with the US on the use of PNR data to prevent and combat terrorism and related transnational crime, as well as organised crime	04/01/2007	COM - Council	<b>total refusal</b>
78	Commission internal document	Minutes of meeting between Mr Krause and Mr Faull	09/01/2007	intra EU negotiation team	<b>total refusal</b>
79	E-mail	Balancing Privacy and Security: The Privacy Implications of Government Data Mining Programs - Senate Judiciary Committee Hearing	12/01/2007	intra EU negotiation team	<b>partial access</b>

<b>Ref. No.:</b>	<b>Type of Document</b>	<b>Title - Topic</b>	<b>Date</b>	<b>Originator-Destination</b>	<b>Initial phase</b>
80	Letter	PNR agreement with the US	18/01/2007	Commission - DE Presidency	<b>total refusal</b>
81	Letter	PNR agreement with the US	26/01/2007	Commission - DE Presidency	<b>total refusal</b>
82	Coreper room doc	PNR	30/01/2007	Presidency- Member States	<b>total refusal</b>
83	Brief for Coreper chair	PNR	26/01/2007	Council Secretariat - Council Presidency	<b>total refusal</b>
84	E-mail	PNR	30/01/2007	intra EU negotiation team	<b>total refusal</b>
85	E-mail	PNR draft - negotiating directives	30/01/2007	Member State - Council Secretariat	<b>total refusal</b>
86	E-mail	PNR draft - negotiating directives	30/01/2007	intra EU negotiation team	<b>total refusal</b>
87	E-mail	PNR draft - negotiating directives	31/01/2007	intra EU negotiation team	<b>total refusal</b>
89	mail	PNR negotiation directives	5/02/2007	intra EU negotiation team	<b>total refusal</b>
90	E-mail	PNR Recom draft ND after CRP 310107	01/02/2007	intra EU negotiation team	<b>total refusal</b>
91	E-mail	PNR negotiation directives	06/02/2007	intra EU negotiation team	<b>total refusal</b>
92	Council Document 5997/07 RESTREINT (same doc. as nr. 24)	Authorisation to open negotiations of an agreement between the EU and the US on the use of passenger name records (PNR) data to prevent and combat terrorism and related crime, and other serious crimes that are transnational in nature, including organised crime	06/02/2007	Presidency - Coreper/Council	<b>total refusal</b>
93	E-mail	Some intelligence from US-DHS on the Information-sharing environment	05/02/2007	intra EU negotiation team	<b>total refusal</b>
94	Letter	Europol's Data protection regime related to personal data in terrorism related AWF / Discussion on PNR data	23/02/2007	Europol - Chairman of the Europol Management Board	<b>total refusal</b>
95	Parliament Document RE\652009EN	Motion for a resolution on SWIFT, the PNR agreement and the transatlantic dialogue on these issues	07/02/2007	Parliament	<b>released</b>
96	Council Document 11595/07	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)	18/07/2007		<b>released</b>
97	Council Document 11596/07	COUNCIL DECISION on the signing, on behalf of the European Union, of an Agreement between the European Union and the United States of America on the processing and transfer of passenger name record (PNR) data by air carriers to the United States Department of Homeland Security (DHS) (2007 PNR Agreement)	18/07/2007		<b>released</b>

## EU-US High Level Contact Group on Data Protection

Ref. No.:	Type of Document	Title-Topic	Date	Originator-Destination	Initial phase
1	Letter	- Contact Group on information sharing and data protection Remit and Scope - General principles of the EU Data Protection System	8/2/2007	EU expert team - US expert team	<b>total refusal</b>
2	Document	USG Proposed Outline for the High Level Contact Group	22/2/2007	US expert team	<b>total refusal</b>
3	Document	HLCG Work Plan	22/2/2007	US expert team	<b>total refusal</b>
4	Document	HLCG Experts Group Suggested Agenda	28/2/2007	US expert team	<b>total refusal</b>
5	Document	Common principles on Data Protection for Law Enforcement purposes	5/3/2007	EU expert team	<b>total refusal</b>
6	e-mail	HLCG Experts Group - Monday DVC Transmitting documents	5/3/2007	EU expert team - US expert team	<b>total refusal</b>
6a	document	HLCG Experts Group Common Principles on Data Protection / Privacy for Law Enforcement Purposes	7/3/2007	EU expert team - US expert team	<b>total refusal</b>
7	e-mail	Debrief HLCG Experts group on data protection principles	19/3/2007	EU expert team - US expert team	<b>total refusal</b>
8	e-mail	DVC US 21 March - new texts for Sensitive and Redress	20/3/2007	intra EU expert team	<b>total refusal</b>
9	Document	HLCG Experts Group Common Principles on Data Protection / Privacy for Law Enforcement Purposes	19/3/2007	EU expert team - US expert team	<b>total refusal</b>
10	e-mail	HLCG Expert Group on data protection principles: Privacy Act - Safe Harbor and tort actions	21/3/2007	intra EU expert team	<b>total refusal</b>
11	e-mail	HLCG Expert Group on data protection principles: GAO report on Privacy and certain DHS programmes and CRS report on data mining	22/3/2007	intra EU expert team	<b>partial access</b>

Ref. No.:	Type of Document	Title-Topic	Date	Originator-Destination	Initial phase
12	Report	Report to the Chairman, Committee on Appropriations, House of representatives: DATA MINING Early attention to Privacy in Developing a Key DHS Program Could Reduce Risks	February 2007	United States Government Accountability Office	released
13	Report	CRS Report for Congress: Data Mining and Homeland Security: An overview	18/1/2007	Jeffrey W. Seifert	released
14	Report	Testimony before the subcommittee on homeland security, committee on appropriations, House of Representatives Homeland Security Continuing Attention to Privacy Concerns is Needed as Programs Are Developed	21/3/2007	United States Government Accountability Office (statement by Linda D. Koontz)	released
15	e-mail	HLCG Experts DVCs	23/3/2007	intra EU expert team	total refusal
16	e-mail	EU US High level contact group	28/3/2007	intra EU expert team	total refusal
17	Document	High level contact group Draft interim report	27/3/2007	EU expert team - EU-US Troika	total refusal
18	Document	Zwischenbericht für das EU-USA. Troika-Treffen auf Ministerebene am 5. April 2007	27/3/2007	EU expert team - EU-US Troika	total refusal
19	e-mail	Oversight Paper	03/04/2007	US expert team- EU expert team	total refusal
20	Document	Oversight Paper US Accountability and oversight for privacy information	3/4/2007	US expert team	total refusal
21	report	interim report for the US-EU Troika Ministerial Meeting on 5 April 2007	4/4/2007	High Level Contact Group	total refusal
22	e-mail	Latest Proposed Version of Interim Report of the High Level Contact Group	10/04/2007	intra EU expert team	total refusal
23	e-mail	DVC HLCG	2/5/2007	US expert team- EU expert team	total refusal
24	Document	HLCG Experts Group Common Principles on Data Protection / Privacy for Law Enforcement Purposes	9/5/2007	US expert team- EU expert team	total refusal
25	Document	Interpretation under European Law of the notion of "complete independence" of supervisory authorities for the protection of personal data		US expert team- EU expert team	released
26	e-mail	HLCG Experts DVCs	15/05/2007	intra EU expert team	total refusal
27	Document	U.S Accountability and Oversight for Privacy Information	3/4/2007	US expert team- EU expert team	total refusal

<b>Ref. No.:</b>	<b>Type of Document</b>	<b>Title-Topic</b>	<b>Date</b>	<b>Originator-Destination</b>	<b>Initial phase</b>
28	e-mail	Why the APEC Privacy Framework is unlikely to protect Privacy	16/10/2007	intra EU expert team	<b>total refusal</b>
29	Document	HLCG Experts Group Common Principles on Data Protection / Privacy for Law Enforcement Purposes	1/11/2007	US expert team- EU expert team	<b>total refusal</b>
30	Document	HLCG Experts Group Common Principles on Data Protection / Privacy for Law Enforcement Purposes	13/11/2007	US expert team- EU expert team	<b>total refusal</b>
31	Article	The U.S Privacy Act in Comparative Perspective	exchanged Fall 2007	F. Bignami, Duke University School of Law	<b>released</b>
32	Article	EU data Protection. Adequacy Determinations	November 2007	Paul Rosenzweig	<b>released</b>
33	Article	DHS addresses critics	November 2007	Lauren Saadat & Shannon Ballard	<b>released</b>
34	e-mail	Article by US government official Rosenzeig that questions adequacy decisions - request for Response	7/12/2007	intra EU expert team	<b>total refusal</b>
35	e-mail	HLCG	6/12/2007	EU-US expert team	<b>total refusal</b>
36	Document	HLCG Experts Group Common Principles on Data Protection / Privacy for Law Enforcement Purposes	7/12/2007	US expert team- EU expert team	<b>total refusal</b>