

## APPENDIX 2

### **FAQs on the transferring of passenger details to American authorities for flights between the European Union and the United States of America**

#### ***1. What passenger information is passed on to the American authorities?***

The United States require that airlines that fly into, from and through the United States (USA) pass on certain passenger details to the US Department of Homeland Security (DHS) in the interests of aviation and homeland safety. There are two groups of passenger details.

- The so-called “passenger name record” (PNR), which includes various items of information that are recorded at the time of booking or which are held by the airline or travel agent, such as the passenger’s name and address, information on the travel route (such as the date of travel, place of departure and destination, seat number and the number of items of luggage), and booking information (such as travel agent and payment details) and various other items of information (such as whether the passenger is a member of a frequent flyer programme).
- The Advanced Passenger Information (API) is mainly taken from the passenger’s passport, and is often recorded when the passenger checks in. This information is passed on by border control authorities before the flight arrives. It is also used to compare passenger details against lists of individuals who are considered a risk to aviation safety.

These FAQs mainly concern PNR details, as these are the ones covered by the agreement of 16 October 2006 between the European Union and the United States. The European Union will ensure that aviation companies observe the requirement to forward information. [Name of the airline] will observe these requirements.

You will find a detailed declaration on the use of PNR details of passengers on flights between the European Union (EU) and the USA recorded by the DHS in the declaration of compliance by the United States Bureau of Customs and Border Protection of the DHS (“PNR Declaration of Compliance”), published in the American Federal Register, vol. 64, no. 131, p. 41543. They can also be obtained from the appendix to decision 2004/535/EG by the Commission, which is available via the following link:

[http://eur-lex.europa.eu/LexUriServ/site/de/oj/2004/l\\_235/l\\_23520040706de00110022.pdf](http://eur-lex.europa.eu/LexUriServ/site/de/oj/2004/l_235/l_23520040706de00110022.pdf)

#### ***2. Why are my PNR details passed to the American DHS before my journey into, from or through the United States?***

The recording of PNR data before a flight is primarily in the interests of aviation safety between the EU and the USA, and homeland safety in the USA. The DHS uses passenger details (PNR) from flights between the EU and the USA to prevent and combat

- terrorism and associated crimes,
- other serious international crimes including international organised crime,
- fleeing in the event of a warrant for arrest or detention for any of the above crimes.

The DHS can obtain most PNR details from passenger flight coupons and other travel documentation during the usual border controls. Transferring these PNR details electronically to the passengers' destinations or before their departure from USA enables the American authorities to analyse the potential risk of these passengers more efficiently and more effectively.

### ***3. On what legal principle is the transfer of PNR details based?***

According to the law (title 49, United States Code, section 44909(c)(3)) and the corresponding (preliminary) rules for implementation (title 19, Code of Federal Regulations, section 122.49b), any airline that undertakes international passenger flights into or from the United States is obliged to grant the DHS electronic access to the PNR details that are recorded by that airline's reservations / check-in systems.

The DHS has submitted a declaration of compliance regarding the use of these details in which it links the use of them to a number of conditions regarding the following:

- the purpose of processing,
- the details used,
- the access method for obtaining the details,
- the maximum period they may be stored,
- the safety measures used,
- the passing on of these details to third parties, and
- passenger access to their details and how to proceed in the event of a complaint.

Based on the DHS's declaration of compliance, the European Union and the United States signed an agreement on 16 October 2006. The European Union will ensure that airlines pass the PNR details on to the DHS.

The responsible authorities in EU member states, and in particular the national data protection authorities, are entitled to stop the transfer of details to the DHS in order to protect the personal details of individuals if the DHS infringes the data protection standard laid down in the declaration of compliance.

### ***4. Will sensitive PNR details also be transferred?***

Certain PNR details that are classified as "sensitive" may be transferred by the reservations and/or check-in systems in the EU to the DHS. Sensitive PNR details are, for instance, certain items of information concerning the passenger's race or ethnic origins, political beliefs, religion, state of health or sexual inclinations. The DHS will not use any PNR details classified as "sensitive" that it receives from the reservations and/or check-in systems in the EU. The DHS has installed an automatic filtering program which ensures that sensitive PNR details are not used.

***5. Will my PNR details be passed on to other authorities?***

PNR details that are recorded for flights between the EU and the USA may in individual cases, and with special data protection guarantees, be passed on to other inner-state or foreign anti-terror and law enforcement agencies for the purpose of preventing and combating terrorism and other major crimes, other international crimes including international organised crime, fleeing arrest or detention in association with any of the above crimes.

PNR details may, when necessary, be passed on to other relevant agencies in order to protect important interests of the passenger and other individuals, especially in the event of a health risk or if required for legal reasons.

***6. How long does the DHS store PNR details for?***

The DHS keeps PNR details of flights between the EU and USA for three years and six months unless it consults specific PNR details manually. In this case, the DHS will store the PNR details for a further eight years. Furthermore, the DHS will store information pertaining to specific registered crimes until the corresponding documents are shelved.

***7. How will the PNR be safeguarded?***

The DHS treats passenger details (PNR) from flights between the EU and the USA as strictly confidential. It operates strict protective measures such as the appropriate data security and access controls to ensure that PNR details are not accessed or used inappropriately or without authorisation.

***8. Who makes sure that the PNR declaration of compliance is observed?***

The Chief Privacy Officer of the Department of Homeland Security is required by law to ensure that personal details held by the agency are handled in accordance with the law. He is independent of all directorates within the DHS, and his decisions are binding for the agency. He monitors the programme, ensures that all regulations are strictly observed by the DHS and checks that the appropriate safety measures are adopted.

***9. Can I ask for a copy of the PNR details that the DHS has about me?***

All passengers are entitled to receive further information on the kind of PNR details that were passed on to the DHS and request a copy of the PNR details stored in the DHS databases.

As is stipulated in the American “Freedom of Information Act” and other American laws, regulations and strategy documents, the DHS will check all passenger requests for documents, including those for the PNR details held by the DHS, irrespective of their nationality and domicile. Under certain circumstances the DHS is entitled to refuse or postpone publication of the PNR details or parts thereof (e.g. if it can be assumed that they will be used to access pending criminal proceedings or if this would disclose any techniques and/or processes used in criminal investigations).

In cases where the DHS refuses access to the PNR on the basis of an exception to the Freedom of Information Act, you may appeal to the Chief Privacy Officer at the DHS on administrative/legal

grounds. The Chief Privacy Officer is responsible both for the protection of personal details and the private sphere, and for the DHS disclosure policy. An appeal may be lodged against the final decision by the agency through the American courts.

***10. Can I insist that my PNR details be amended?***

Of course. Passengers are welcome to contact the departments listed at question 12 and ask for their PNR details in the DHS databases to be corrected. The DHS will undertake these corrections provided they are justified and confirmed.

***11. What American departments can I contact in connection with this programme?***

*General questions concerning PNR details or queries concerning my PNR details*

If you would like information on the PNR details that have been transferred to the DHS, or if you wish to access your PNR details stored there, then please write to: Freedom of Information Act (FOIA) Request, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Further details on the information procedure are contained in "section 19 Code of Federal Regulations", item 103.5 ([www.dhs.gov/foia](http://www.dhs.gov/foia)).

*Objections. Complaints and applications for correction*

If you have any objections or complaints, or if you would like your PNR details to be corrected, please write to: Assistant Commissioner, DHS Office of Field Operations, US Customs and Border Protection, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229.

Decisions by the DHS may be checked by the Chief Privacy Office of the Department of Homeland Security, Washington, DC 20528. A passenger may also contact the privacy authorities in his EU member state with a query, complaint or application for correction if further checks are necessary.

***12. To whom can I turn if the outcome of my complaint is unsatisfactory?***

If the DHS is unable to give a satisfactory response to your complaint, you may write to the Chief Privacy Office at the Department of Homeland Security, Washington, DC 20528. The Chief Privacy Officer will investigate the matter and attempt to find a solution. You may also contact the privacy officer in your own country with a complaint. You will find the addresses of the privacy officer in your country at this link.

[http://ec.europa.eu/justice\\_home/fsj/privacy/thridcountries/index\\_de.htm](http://ec.europa.eu/justice_home/fsj/privacy/thridcountries/index_de.htm)

The Chief Privacy Officer is obliged to handle any complaints that are passed to him by the privacy authorities of the members of the European Union for EU nationals if he has ordered the privacy agency to act on his behalf.

***13. Where can I find out more?***

You can obtain further information on the transferring of PNR details to the USA from your country's privacy agency.

Contact details for the Federal Privacy Officer:

Bundesbeauftragter für den Datenschutz

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D-53131 Bonn

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Husarenstrasse 30  
D-53117 Bonn

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E-Mail: [poststelle@bfd.bund.de](mailto:poststelle@bfd.bund.de)  
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