

~~CONFIDENTIAL~~

Department of Homeland Security
Washington, DC 20525



Homeland Security

[b2]

INFORMATION

Deleted: June 12, 2006

Deleted: June 11, 2006

MEMORANDUM FOR: Stewart Baker, Assistant Secretary for Policy

THROUGH: Paul Rosenzweig, Acting Assistant Secretary for Policy Development and Counselor to the Assistant Secretary for Policy

FROM: Michael Scardaville, Special Assistant and International Policy Advisor, PDEV

SUBJECT: Assessment of the Commission's proposed resolution of the PNR situation and recommended short term actions (u)

Purpose

(c)

b1

Background: The Commission's Proposal

(Felt - MWR)

b1

(c)

002172

DERIVED: SCHNEIDER MFR
Declass: 17 Sept 2022

57

~~CONFIDENTIAL~~

9

~~FOLIO NOFORN~~

~~CONFIDENTIAL~~

(c)

FBI-ADD

b1

(U) By June 30, 2006, the Commission intends to notify DHS of its intent to terminate the agreement under the provisions of Article 7 of the Agreement. This is necessary to comply with the Court's decision, which preserved the effect of the Commission's adequacy finding only until September 30, 2006.

FBI-ADD

b1

(c)

FBI-mon

~~FOLIO NOFORN~~

002173

~~FOUO/NOFORN~~

~~CONFIDENTIAL~~

Discussion

The Commission's Goal:

(C)

b1

(C)

DHS Interests:

(U) [

b5

]

(C)

b1

(U) This concern is consistent with Executive Order 13388 and the President's Memorandum issued on December 16, 2006 to Heads of Executive Departments and Agencies on "Guidelines and Requirements in Support of the Information Sharing Environment" (ISA)

~~FOUO/NOFORN~~

~~CONFIDENTIAL~~

002174

~~FOLO. X GEORN~~

~~CONFIDENTIAL~~

(c) b1

Time Constraints:

(u) [b5]

(c) b1

(c)

Critical Issues:

(u) [b5]

~~FOLO. X GEORN~~

~~CONFIDENTIAL~~

002175

~~FOLO/NOFORN~~

~~CONFIDENTIAL~~

(c)

(c)

b1

(c)

(c)²

~~FOLO/NOFORN~~

002176

~~FOUO/MOFORN~~

~~CONFIDENTIAL~~

(c)

(c)

b1

(c)

(c)

(c)

b1

~~FOUO/MOFORN~~

~~CONFIDENTIAL~~

002177

~~CONFIDENTIAL~~

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



Homeland Security

[b2]

INFORMATION

Deleted: June 12, 2006

Deleted: June 11, 2006

MEMORANDUM FOR: Stewart Baker, Assistant Secretary for Policy

THROUGH: Paul Rosenzweig, Acting Assistant Secretary for Policy Development and Counselor to the Assistant Secretary for Policy

FROM: Michael Scardaville, Special Assistant and International Policy Advisor, PDEV

SUBJECT: Assessment of the Commission's proposed resolution of the PNR situation and recommended short term actions (U)

Purpose

(c)

b1

Background: The Commission's Proposal

(c)

b1

(c)

DERIVED: SCHNEIDER MFR
DECLASS: 17 Aug 2022

002178

~~CONFIDENTIAL~~

368

~~FOUO NOFORN~~

~~CONFIDENTIAL~~

/FGE-MID

b1

(u) By June 30, 2006, the Commission intends to notify DHS of its intent to terminate the agreement under the provisions of Article 7 of the Agreement. This is necessary to comply with the Court's decision, which preserved the effect of the Commission's adequacy finding only until September 30, 2006.

/FGE-MID

b1

(c)

/FGE-MID

~~FOUO NOFORN~~

002179

Discussion

The Commission's Goal:

(c)

b1

(c)

DHS Interests:

(u) [

b5

]

(c)

b1

(u) This concern is consistent with Executive Order 13388 and the President's Memorandum issued on December 16, 2006 to Heads of Executive Departments and Agencies on "Guidelines and Requirements in Support of the Information Sharing Environment" (ISA)

~~FOUO NOFORN~~

~~SECRET~~

(c)

b1

Time Constraints:

(u)

[

b5

]

(c)

b1

(c)

Critical Issues:

(c)

b1

~~FOUO NOFORN~~

002181

(c)

1.

(c)

(c)

b1

(c)

2.

(c)

~~CONFIDENTIAL~~

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



Homeland Security

[b2]

Deleted: June 8, 2006

ACTION

MEMORANDUM FOR: Stewart Baker, Assistant Secretary for Policy

THROUGH: Paul Rosenzweig, Acting Assistant Secretary for Policy Development and Counselor to the Assistant Secretary for Policy

FROM: Michael Scardaville, Special Assistant and International Policy Advisor, PDEV

SUBJECT: Assessment of the Commission's proposed resolution of the PNR situation and recommended short term actions (U)

Purpose

(c)

b1

Background: The Commission's Proposal

(S/Ref-1000)

b1

(c)

002184

DERIVED: SCHNEIDER MFR
DECLASS: 13 Sep 2022

(58)

~~CONFIDENTIAL~~

~~FOUO/NOFORN~~

~~CONFIDENTIAL~~

(c)

C/FCI-MOD

b1

(U)

By June 30, 2006, the Commission intends to notify DHS of its intent to terminate the agreement under the provisions of Article 7 of the Agreement. This is necessary to comply with the Court's decision which preserved the effect of the Commission's adequacy finding only until September 30, 2006.

C/FCI-MOD

b1

c

C/FCI-MOD

~~FOUO/NOFORN~~

~~CONFIDENTIAL~~

002185

~~FOUO NOFORN~~

~~CONFIDENTIAL~~

(classification)

b1

Discussion

The Commission's Goal:

(c)

b1

(c)

DHS Interests:

(d) [

b5

]

(e)

b1

~~FOUO NOFORN~~

~~CONFIDENTIAL~~

002186

~~FOUO/NOFORN~~

~~CONFIDENTIAL~~

(c)

b1

(c)

Time Constraints:

(u)

[b5]

(c)

b1

(c)

(c)

b

~~FOUO/NOFORN~~

~~CONFIDENTIAL~~

002187

~~FOUO/NOFORN~~

~~CONFIDENTIAL~~

Critical Issues:

(c)

1.

(c)

(c)

b1

(c)

2.

(c)

~~FOUO/NOFORN~~

002188

~~CONFIDENTIAL~~

~~FOUO/NOFORN~~

~~CONFIDENTIAL~~

(c)

(c)

b1

(c)

(c)

(c)

b1

~~FOUO/NOFORN~~

~~CONFIDENTIAL~~

002189

~~FOUO/NOFORN~~

~~CONFIDENTIAL~~

(c)

b1

Recommendations

(c)^{1.}

b1

Approve _____ Disapprove _____
Modify _____ Needs more discussion _____

(c)^{2.}

b1

Approve _____ Disapprove _____
Modify _____ Needs more discussion _____

(c)^{3.}

b1

~~FOUO/NOFORN~~

~~CONFIDENTIAL~~

002190

FOUO: ~~NOFORN~~

~~CONFIDENTIAL~~

(c)

b1

Approve _____ Disapprove _____
Modify _____ Needs more discussion _____

cc:

FOUO: ~~NOFORN~~

002191

~~CONFIDENTIAL~~



Homeland Security

[b2]

Deleted: June 8, 2006

ACTION

MEMORANDUM FOR: Stewart Baker, Assistant Secretary for Policy

THROUGH: Paul Rosenzweig, Acting Assistant Secretary for Policy Development and Counselor to the Assistant Secretary for Policy

FROM: Michael Scardaville, Special Assistant and International Policy Advisor, PDEV

SUBJECT: Assessment of the Commission's proposed resolution of the PNR situation and recommended short term actions (u)

Purpose

(c)

b1

Background: The Commission's Proposal

:/REC MOD)

b1

(c)

DERIVED: SCHNEIDER MFR
Declass: 13 Sept 2022

002192

CONFIDENTIAL

59

(2)

~~FOUO/NOFORN~~

~~CONFIDENTIAL~~

(C)
/ (Ref. mod)

b1

(U) By June 30, 2006, the Commission intends to notify DHS of its intent to terminate the agreement under the provisions of Article 7 of the Agreement. This is necessary to comply with the Court's decision which preserved the effect of the Commission's adequacy finding only until September 30, 2006.

/ (Ref. mod)

b1

(C)

(C) / (Ref. mod)

~~FOUO/NOFORN~~

~~CONFIDENTIAL~~

002193

FOUO ~~NOFORN~~

~~CONFIDENTIAL~~

(c) (P) (S) (M) (D)

b1

Discussion

The Commission's Goal:

(c)

b1

(c)

DHS Interests:

(u) [

b5

]

(c)

b1

FOUO ~~NOFORN~~

~~CONFIDENTIAL~~

002194

~~FOUO/NOFORN~~

~~CONFIDENTIAL~~

(e)

b1

(c)

Time Constraints:

(u)

[b5]

(c)

b1

(c)

(c)

b1

~~FOUO/NOFORN~~

[Handwritten signature]

002195

~~FOUO/NOFORN~~

~~CONFIDENTIAL~~

Critical Issues

(c)

1.

(c)

(c)

b1

(c)

2.

(c)

~~FOUO/NOFORN~~

002196

~~FOUO/NOFORN~~

~~CONFIDENTIAL~~

(c)

(c)

b1

(c)

(c)

(c)

b1

~~FOUO/NOFORN~~

002197

~~CONFIDENTIAL~~

FOUO. ~~NOFORN~~

~~CONFIDENTIAL~~

(c)

b1

Recommendations

(c)¹

b1

Approve _____ Disapprove _____

Modify _____ Needs more discussion _____

(c)²

b1

Approve _____ Disapprove _____

Modify _____ Needs more discussion _____

~~(c)³~~

~~b1~~

FOUO. ~~NOFORN~~

002198

~~FOUO/NOFORN~~

~~CONFIDENTIAL~~

(c)

b1

Approve _____ Disapprove _____
Modify _____ Needs more discussion _____

cc:

~~FOUO/NOFORN~~

002199

~~CONFIDENTIAL~~

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



Homeland
Security

[b2]

Deleted: June 7, 2006

ACTION

MEMORANDUM FOR: Stewart Baker, Assistant Secretary for Policy

THROUGH: Paul Rosenzweig, Acting Assistant Secretary for Policy Development
and Counselor to the Assistant Secretary for Policy

FROM: Michael Scardaville, Special Assistant and International Policy
Advisor, PDEV

SUBJECT: Assessment of the Commission's proposed resolution of the PNR situation and
recommended short term actions (u)

Purpose

(c)

b1

Background: The Commission's Proposal

(c)

b1

(FGL-mod)

DERIVED: SCHNEIDERE MFR
DECLASS: 13 Sept 2022

002200

~~CONFIDENTIAL~~

(b1)

753

(c/fp-100)

b1

(u) Around the same time that the Council Decision is being finalized, but definitely by June 30, 2006, the Commission intends to notify DHS of its intent to terminate the agreement under the provisions of Article 7 of the Agreement. This is necessary to comply with the Court's decision to preserve the effect of the Commission's adequacy finding until September 30, 2006.

(c/fp-100)

b1

(c)

(c/fp-100)

~~FOUO NOFORN~~

~~CONFIDENTIAL~~

Discussion

The Commission's Goal:

(C)

b1

(C)

DHS Interests:

(U) [

b5

]

(C)

b1

~~FOUO NOFORN~~

~~CONFIDENTIAL~~

002202

~~FOUO NOFORN~~

~~CONFIDENTIAL~~

(c)

b1

(c)

Time Constraints:

(u)

[b5]

(c)

b1

(c)

~~FOUO NOFORN~~

~~CONFIDENTIAL~~

002203

~~FOUO NOFORN~~

~~CONFIDENTIAL~~

The Next Step:

(S) (FOUO) (NOFORN)

b1

Critical Issues:

(c)

1.

(c)

b1

(c)

(c)

~~FOUO NOFORN~~

062204

~~FOUO/OFORN~~

2.

(c)

(c)

b1

(c)

(c)

(c)

~~FOUO/OFORN~~

002205

~~FOUO NOFORN~~

~~CONFIDENTIAL~~

(c)

(c)

b1

Recommendations

(c)

(c)

b1

(c)

Approve _____ Disapprove _____

Modify _____ Needs more discussion _____

~~FOUO NOFORN~~

002206

~~FOUO/NOFORN~~

~~CONFIDENTIAL~~

2.
(c)

b1

Approve _____ Disapprove _____
Modify _____ Needs more discussion _____

3.
(c)

b1

Approve _____ Disapprove _____
Modify _____ Needs more discussion _____

4.
(c)

b1

(c)

~~FOUO/NOFORN~~

~~CONFIDENTIAL~~

002207

~~FOUO/OFORN~~

~~CONFIDENTIAL~~

(c)

b1

Approve _____ Disapprove _____

Modify _____ Needs more discussion _____

cc:

~~FOUO/OFORN~~

~~CONFIDENTIAL~~

002208

~~CONFIDENTIAL~~

Department of Homeland Security
Washington, DC 20528



Homeland Security

[b2]

Deleted: June 11, 2006

INFORMATION

MEMORANDUM FOR: Stewart Baker, Assistant Secretary for Policy

THROUGH: Paul Rosenzweig, Acting Assistant Secretary for Policy Development and Counselor to the Assistant Secretary for Policy

FROM: Michael Scardaville, Special Assistant and International Policy Advisor, PDEV

SUBJECT: Assessment of the Commission's proposed resolution of the PNR situation and recommended short term actions (u)

Purpose

(c)

b1

Background: The Commission's Proposal

(c)

b1

(c)

DERIVED: SCHNEIDER MFR
Declass: 21 Sept 2022

002209

154

~~CONFIDENTIAL~~

327.1

~~FOUO OFORN~~

~~CONFIDENTIAL~~

(c)

~~(S)~~

b1

(U) By June 30, 2006, the Commission intends to notify DHS of its intent to terminate the agreement under the provisions of Article 7 of the Agreement. This is necessary to comply with the Court's decision, which preserved the effect of the Commission's adequacy finding only until September 30, 2006.

~~(S)~~

b1

(c)

~~(S)~~

~~FOUO OFORN~~

002210

~~FOUO NOFORN~~

~~CONFIDENTIAL~~

Discussion

The Commission's Goal

(c)

b1

(c)

DHS Interests:

(u) [

b5

]

(c)

b1

(u)

This concern is consistent with Executive Order 13388 and the President's Memorandum issued on December 16, 2006 to Heads of Executive Departments and Agencies on "Guidelines and Requirements in Support of the Information Sharing Environment" (ISA)

~~FOUO NOFORN~~

002211

~~FOUO/NOFORN~~

(c)

b1

Time Constraints

(u)

[

b5

]

(c)

b1

(c)

Critical Issues:

(c)

b1

~~FOUO/NOFORN~~

002212

~~FOUO NDFORN~~

(c)

1.

(c)

(c)

b1

(c)

(c)²

~~FOUO NDFORN~~

002213

~~FOUO/NOFORN~~

~~CONFIDENTIAL~~

(c)

(c)

(c)

b1

(c)

(c)

b1

~~FOUO/NOFORN~~

002214

~~CONFIDENTIAL~~

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



Homeland Security

[b2]

ACTION

Deleted: June 8, 2006

Deleted: June 7, 2006

MEMORANDUM FOR: Stewart Baker, Assistant Secretary for Policy

THROUGH: Paul Rosenzweig, Acting Assistant Secretary for Policy Development and Counselor to the Assistant Secretary for Policy

FROM: Michael Scardaville, Special Assistant and International Policy Advisor, PDEV

SUBJECT: Assessment of the Commission's proposed resolution of the PNR situation and recommended short term actions (v)

Purpose

(c)

b1

Deleted: [b5]

Deleted: j

Deleted: :

Deleted: and

Deleted: :

Deleted: [b5]

Deleted:

Background: The Commission's Proposal

(c)

b1

(c) ↓

(c)

b1

DERIVED: SCHNEIDER MFR
Declass: 21 Sept 2022

002215

~~CONFIDENTIAL~~

155

326.1

FOLD ~~X~~ OFORN

~~CONFIDENTIAL~~

(c)

b1

Deleted:

Deleted:

Deleted:

Deleted:

Deleted:

[b5]

REG-11

~~REG-11~~

b1

(u) | By June 30, 2006, the Commission intends to notify DHS of its intent to terminate the agreement under the provisions of Article 7 of the Agreement. This is necessary to comply with the Court's decision which preserved the effect of the Commission's adequacy finding only until September 30, 2006.

REG-mod

b1

(c)(1)

b1

(c)

(c)

REG-11

FOLD ~~X~~ OFORN

~~CONFIDENTIAL~~

002216

~~FOUO/NOFORN~~

~~CONFIDENTIAL~~

b1

(c)(1)
(c)(2)

Discussion

The Commission's Goal

(c)

(c)

(c)

b1

b1

(c)

(c)

(c)

(c)

DHS Interests

(u) [

b5

]

(c)

b1

Deleted:
Deleted: out
Deleted: e

~~FOUO/NOFORN~~

[Handwritten signature]

002217

~~FOUO NYFORN~~

(c)

b1

(c)

(c)

Time Constraints

(c)

[

b5

]

(c)

(c)

b1

(c)

(c)

(c)

b1

(c)

(c)

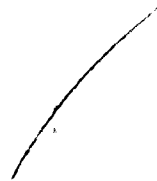
(c)

(c)

~~FOUO NYFORN~~

002218

~~FOUO/NOFORN~~



Critical Issues

(c)

(c)

(c)

b1

Deleted: [65]
Deleted: ing

(c)

2.

(c)

~~FOUO/NOFORN~~



002219

~~FOUO: XEORN~~

~~SECRET~~

(c)

(c)

(c)

b1

(c)

b1

(c)

(c)

(c)

b1

~~FOUO: XEORN~~

~~SECRET~~

002220

~~FOUO NOFORN~~

(c)

b1

(c)

b1

Recommendations

(c)

b1

(c)

Approve _____ Disapprove _____

Modify _____ Needs more discussion _____

(c)

b1

Approve _____ Disapprove _____

Modify _____ Needs more discussion _____

(c)

b1

~~FOUO NOFORN~~

002221

~~FOUO NOFORN~~

~~SECRET~~

(c)

bl

(c) bl

(c)

Approve _____ Disapprove _____

Modify _____ Needs more discussion _____

cc:

~~FOUO NOFORN~~

002222

~~CONFIDENTIAL~~

(c)

b1

(c)

(c)

b1

(c)

Approve _____ Disapprove _____

Modify _____ Needs more discussion _____

002223

~~CONFIDENTIAL~~

U.S. Department of Homeland Security
Washington, DC 20523



Homeland
Security

[b2]

Deleted: June 8, 2016

ACTION

MEMORANDUM FOR: Stewart Baker, Assistant Secretary for Policy

THROUGH: Paul Rosenzweig, Acting Assistant Secretary for Policy Development and Counselor to the Assistant Secretary for Policy

FROM: Michael Scardaville, Special Assistant and International Policy Advisor, PDEV (u)

SUBJECT: Assessment of the Commission's proposed resolution of the PNR situation and recommended short term actions (u)

Purpose

(c)

b1

Background: The Commission's Proposal

(c)

b1

~~CONFIDENTIAL~~
(c)

DERIVED: SCHNEIDER MFR
DECLASS: 21 Sept 2022

002224

~~CONFIDENTIAL~~

326.2

356

~~FOUO~~ ~~FOFORN~~

~~CONFIDENTIAL~~

(c)

REG-MOD

b1

(U) By June 30, 2006, the Commission intends to notify DHS of its intent to terminate the agreement under the provisions of Article 7 of the Agreement. This is necessary to comply with the Court's decision which preserved the effect of the Commission's adequacy finding only until September 30, 2006.

REG-MOD

b1

(c)

REG-MOD

~~FOUO~~ ~~FOFORN~~

~~CONFIDENTIAL~~

002225

(c)(6)
(c)(7)(D)

b1

Discussion

The Commission's Goal

(c)

b1

(c)

DHS Interests

(u)

[

b5

]

(c)

b1

~~CONFIDENTIAL~~

~~FOUO/NOFORN~~

(d)

b1

(e)

Time Constraints:

(u)

[

b5

]

(e)

b1

(e)

(e)

~~FOUO/NOFORN~~

~~CONFIDENTIAL~~

002227

~~FOUO/NOFORN~~

Critical Issues

(c)

(c)

(c)

b1

(c)

2.

(c)

~~FOUO/NOFORN~~

002228

~~FOUO/NOFORN~~

(c)

(c)

b1

(c)

(c)

(c)

b1

~~FOUO/NOFORN~~

~~CONFIDENTIAL~~

002229

~~FOUO/N OFORN~~

~~CONFIDENTIAL~~

(c)

b1

Recommendations

¹
(c)

b1

Approve _____ Disapprove _____

Modify _____ Needs more discussion _____

²
(c)

b1

Approve _____ Disapprove _____

Modify _____ Needs more discussion _____

³
(c)

b1

~~FOUO/N OFORN~~

~~CONFIDENTIAL~~

002220

~~FOUO/NOFORN~~

~~CONFIDENTIAL~~

(c)

b1

(c)

Approve _____ Disapprove _____

Modify _____ Needs more discussion _____

cc:

~~FOUO/NOFORN~~

~~CONFIDENTIAL~~

002231



Homeland Security

[b2]

ACTION

Deleted: June 8, 2006
Deleted: June 7, 2006

MEMORANDUM FOR: Stewart Baker, Assistant Secretary for Policy

THROUGH: Paul Rosenzweig, Acting Assistant Secretary for Policy Development and Counselor to the Assistant Secretary for Policy

FROM: Michael Scardaville, Special Assistant and International Policy Advisor, PDEV

SUBJECT: Assessment of the Commission's proposed resolution of the PNR situation and recommended short term actions (u)

Purpose

(c)

b1

Deleted: [b5]
Deleted: d
Deleted: s
Deleted: and
Deleted: i
Deleted: [b5]
Deleted:

j(Rel-MOD)

Background: The Commission's Proposal

b1

(c)

(c) b1

DERIVED: SCHNEIDER MFR
DeClass: 13 Sept 2022

002232

(157)

(60)

~~FOLO NO FORN~~

(c) ↓

b1

b1

(c)

(FGE-MOP)

(U)

By June 30, 2006, the Commission intends to notify DHS of its intent to terminate the agreement under the provisions of Article 7 of the Agreement. This is necessary to comply with the Court's decision to preserve the effect of the Commission's adequacy finding until September 30, 2006.

(FGE-MOP)

b1

(c)

(FGE-MOP)

~~FOLO NO FORN~~

002233

~~FOUO/NOFORN~~

b1

(c) [unclear]

Discussion

The Commission's Goal:

(c)

(c) b1

b1

(c)

DHS Interests:

(u) [

b5

]

(c)

b1

~~FOUO/NOFORN~~

ated: r

FOLD ~~X~~ REFORM

(c)

b1

(c)

(c)

(c)

Time Constraints:

(c)

[

b5

]

b1

(c)

(c)

b1

(c)

(c)

(c)

FOLD ~~X~~ REFORM

002235

~~FOUO/NOFORN~~

~~CONFIDENTIAL~~

Critical Issues:

(c)

1.

(c)

(c)

b1

Deleted: [b5]
Deleted: ing

(c)

2.

(c)

~~FOUO/NOFORN~~

~~CONFIDENTIAL~~

002236

~~FOLO XOTORN~~

(c)

(c)

b1

(c) b1
(c)

(c)

Deleted: ing
Deleted: [b5]
Deleted: A

Deleted: [b5]

Deleted: 's

Deleted: al

Deleted: for a

Deleted: [b5]

(c) b1

Deleted: [b5]
Deleted

(c)

~~FOLO XOTORN~~

002237

~~FOUO/NOFORN~~

~~CONFIDENTIAL~~

(c)

b1

Recommendations

(c)

b1

(c)

b1

Approve _____

Disapprove _____

Modify _____

Needs more discussion _____

(c)

b1

Approve _____

Disapprove _____

Modify _____

Needs more discussion _____

(c)

b1

~~FOUO/NOFORN~~

~~CONFIDENTIAL~~

002238

~~FOUO X OFORN~~

~~CONFIDENTIAL~~

(c)

b1

Deleted:
Deleted: as
Deleted: t
Deleted:
Deleted: and
Deleted:
Deleted:
Deleted:
Deleted:

[b5]

Approve _____ Disapprove _____

Modify _____ Needs more discussion _____

cc:

~~FOUO X OFORN~~

~~CONFIDENTIAL~~

002239

~~CONFIDENTIAL~~

Page 4: [1] Deleted

michael.scardaville

6/8/2006 12:01:00 PM

The Next Step:

(c)

b1

Page 7: [2] Deleted

michael.scardaville

6/8/2006 12:01:00 PM

(c)

(c)

b1

(c)

Approve _____ Disapprove

Modify _____ Needs more discussion

~~CONFIDENTIAL~~

002240

b5

Thursday

~~CONFIDENTIAL~~

①

②

b5

(U)

RECOGNISING the importance of respecting fundamental rights and freedoms, notably privacy, and the importance of respecting these values, while facilitating legitimate travel, preventing and combating crimes and preserving national security.

(C)

b1

③

④

b5

[Add additional preambularity as needed]

Authority to Collect

[b5]

(U)

[]

b5

⑤

b5

Purpose (U)

[b5]

(C)

[]

b1

Use limitations (U)

(U) A.
" B.
"

b1

Special categories of information (U)

(U)

b1

Security (U)

~~CONFIDENTIAL~~

Revised: Schneider MPA
Revised: 12/2022

001932

~~SECRET~~

(C)

Security

(C)

(C)

b1

(C)

(C)

(C)

Retention ^(P)

(C)

b1

(C)

b1

(C)

Final

Access and redress (C)

(C)

(C)

b1

001933

~~SECRET~~

Oversight/Accountability (a)

(a)

(a)

b1

~~CONFIDENTIAL~~

001934

~~CONFIDENTIAL~~

Office of Investigations

U.S. Department of Homeland Security
425 I Street, NW
Washington, DC 20536



U.S. Immigration
and Customs
Enforcement

MEMORANDUM FOR: Stewart Baker
Assistant Secretary for Policy

THROUGH: Julie L. Myers
Assistant Secretary
U.S. Immigration and Customs Enforcement

FROM: [b6]
Assistant Director, Investigations
Office of International Affairs

SUBJECT: ICE Attaché Assistance on EU PNR Information Sharing (u)

(u) On July 20, 2006 you requested assistance from ICE regarding the Passenger Name Record (PNR) issue and related developments concerning law enforcement information sharing with the European Union (EU). This memorandum provides a status on what actions ICE has taken to date.

(u) • On Friday, July 21, the ICE Office of International Affairs (OIA) distributed background information and talking points to the following ICE Attachés in Europe:

<u>Office</u>	<u>Area of Responsibility</u>
• Athens	Greece
• Copenhagen	Denmark, Finland
• Frankfurt	Germany, Poland, Latvia
• The Hague	Netherlands, Belgium, Luxembourg
• London	United Kingdom
• Madrid	Spain, Portugal
• Paris	France
• Rome	Italy

(u) • Attached is a list of law enforcement counterparts for these countries.

- (u) •
- a)
 - b)
 - c)

b1

Revised: Schneider MFR

Revised: 12/20/02

DRAFT

~~CONFIDENTIAL~~

www.ice.gov

001940

(159)

SUBJECT: ICE Attaché Assistance on EU PNR information Sharing
Page 2

d)

(a) •
(c) •

b1

~~CONFIDENTIAL~~

(u) ICE will forward that information to your office the following week. Please contact me if you would like to discuss.

~~CONFIDENTIAL~~

001941

~~SECRET~~

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



Homeland
Security

21

(v)

Date (centered)

(v)

ACTION

(v)

MEMORANDUM FOR: Recipient's Name

(v)

THROUGH: (if applicable)

(v)

FROM: Sender's Name
(Title optional)

(v)

SUBJECT: PNR Initial Critical Decisions

(v)

Purpose

(v)

This paragraph should introduce or summarize an important policy development not otherwise available through regular meetings or reports. Or this memorandum may be complying with a specific request, such as "To analyze the differences among positions taken with respect to " or "To update you on the status of " or "To respond to your request for information regarding "

Background: The Commission's Proposal (v)

C/F.03
mod)

b1

(5)

Deleted: 3

~~SECRET~~

001326

Derived from: Schuster MPA
Declass on: 6/2021

160

1/8

Deleted: for

(S) Around the same time that the Council Decision is being finalized, but definitely by June 30, 2006, the Commission intends to notify DHS of its intent to terminate the agreement under the provisions of Article 7 of the Agreement. L = b5

(V) b6
Comment (L) [b5]

(S) / ASD
MID

b1

(S) In addition, the Commission has indicated that signing of a new instrument along the lines of their proposal would not affect the sunset provisions called for in Article 46 of the Undertakings. As a result, DHS and the EU would still be required to begin reevaluating the agreement in November 2006 and it would sunset in November 2007 if agreement to amend or continue it was not reached. In effect, this view by the decision would make any agreement signed between now and September 30th an interim arrangement.

(S) Once a new agreement is struck (assuming one is) it would be subject to the Council's approval through another Council decision. At this time, individual EU Member States, may notify the Council of their intent to seek ratification of the agreement by their national parliaments, a process that could take many years and would not be guaranteed. However, to cover this possibility, the Commission intends to include a provision in this second Council Decision indicating that the agreement enters into force pending ratification by national parliaments.

Discussion (S)

The Commission's Goal: (S)

(S)

b1

b6
Deleted: do not refer to
Comment (S) This sentence could be clearer. I tried with it, but there is still room for improvement.

(S)



b1

(c)

Deleted: [b3]
Deleted: [b3]

DHS Interests: (v)

(c)

(c)

b1

(c)

101

16

Comment: [unclear] [unclear] [unclear]
Initial or in Capital?

Time Constraints: (u)

(a) [b5]

(c) b1

(u) [b5]

The Next Step: (u)

(C/PS)
(u) b1

Critical Issues: (u)

101

691329

~~SECRET~~

(C)

(C)

(C)

T

(C)

b1

~~(C)~~

(C)

(C)

(C)

~~SECRET~~

001330

~~SECRET~~

(c) b1

Recommendations (c)

1.

(c)

(c) b1

(c) [b5]

Approve _____ Disapprove _____

Modify _____ Needs more discussion _____

2. ;

(c) b1

Approve _____ Disapprove _____

Modify _____ Needs more discussion _____

~~RET~~

061331

~~SECRET~~

cc)³.

b1

Approve _____ Disapprove _____

Modify _____ Needs more discussion _____

cc:

~~SECRET~~

001332



Homeland Security

~~SECRET~~

Date (centered) (U)

ACTION (U)

MEMORANDUM FOR: Recipient's Name (U)

THROUGH: (if applicable) (U)

FROM: Sender's Name (U)
(Title optional)

SUBJECT: PNR Initial Critical Decisions (U)

Purpose

(U) [Faint, mostly illegible text describing the purpose of the memorandum]

Background: The Commission's Proposal (U)

(C/P) [Faint handwritten notes]

b1

(S)

001333

Revised From: Schneider MPR
 Declass dni 6/2021

(161)

(47)

(CV) Around the same time that the Council Decision is being finalized, but definitely by June 30, 2006, the Commission intends to notify DHS of its intent to terminate the agreement under the provisions of Article 7 of the Agreement. C- b3

(C-FOI)
mod

b1

(V) In addition, the Commission has indicated that signing of a new instrument along the lines of their proposal would not affect the sunset provisions called for in Article 46 of the Undertakings. As a result, DHS and the EU would still be required to begin reevaluating the agreement in November 2006 and it would sunset in November 2007 if agreement to amend or continue it was not reached. In affect, this view by the decision would make any agreement signed between now and September 30th an interim arrangement.

(CV) Once a new agreement is struck (assuming one is) it would be subject to the Council's approval through another Council decision. At this time, individual EU Member States, may notify the Council of their intent to seek ratification of the agreement by their national parliaments, a process that could take many years and would not be guaranteed. However, to cover this possibility, the Commission intends to include a provision in this second Council Decision indicating that the agreement enters into force pending ratification by national parliaments.

Discussion (CV)

The Commission's Goal: (CV)

(S)

b1

001001



b1

(c)

DHS Interests: (c)

(c)

b1

(c)

(c)

001835

Time Constraints: (U)

(U) [b5]

Formatted: Font: 12 pt
Formatted: Comment Text

(U) | b1

Formatted: Font: 12 pt

(U) [b5]

Formatted: Font: 12 pt
Formatted: Font: 12 pt
Formatted: Font: 12 pt
Formatted: Font: 12 pt
Formatted: Font: 12 pt
Formatted: Font: 12 pt

The Next Step: (U)

Deleted:

CC-PPT/
mod)

b1

[b5]

Critical Issues: (U)

~~SECRET~~

(c)

(c)

(c)

T

(c)

b1

(c)

(c)

(c)

SECRET

001337

~~SECRET~~

(c) b1

Recommendations (v)

1.

(c) b1

(c)

(c) [b5]

Approve _____ Disapprove _____

Modify _____ Needs more discussion _____

2. 1

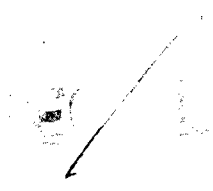
(c) b1

Approve _____ Disapprove _____

Modify _____ Needs more discussion _____

~~SECRET~~

001033



3.

(c)

b1

Approve _____ Disapprove _____

Modify _____ Needs more discussion _____

cc:



001839

~~SECRET~~



Homeland Security

Date (centered)

ACTION

MEMORANDUM FOR: Recipient's Name

THROUGH: (if applicable)

FROM: Sender's Name
(Title optional)

SUBJECT: PNR Initial Critical Decisions (u)

Purpose (u)

(u)

This paragraph should introduce some detail of the program policy. The opinion not otherwise available through regular meetings or reports. This information may be complying with a specific request, such as "To analyze the differences among positions taken with respect to ..." or "To update ... on the status of ..." or "To respond to your request for information regarding ..."

Background: The Commission's Proposal

(C-FOIA)
mod)

b1

(u)

Comment [D1]:
[b5]
Deleted: is
Deleted: as
Deleted: its

(S)

Deleted: 3

~~SECRET~~

001340

- Derived from: Schneider MFA
- Reclass on: 6/2021

(48)

(162)

b1

Deleted: for
Deleted:

(U) Around the same time that the Council Decision is being finalized, but definitely by June 30, 2006, the Commission intends to notify DHS of its intent to terminate the agreement under the provisions of Article 7 of the Agreement. ~~2~~ b5

(U)

Comment

[b5 b6]

(C-Post)
Mod)

b1

Deleted:

~~2~~ b5
Deleted: to

(U) In addition, the Commission has indicated that the signing of a new instrument along the lines of their proposal would not affect the sunset provisions called for in Article 46 of the Undertakings. As a result, DHS and the EU would still be required to begin reevaluating the agreement in November 2006 and it would sunset in November 2007 if agreement to amend or continue it were not reached. In effect, this view by the decision would make any agreement signed between now and September 30th an interim arrangement.

Deleted: as

(U) Once a new agreement is struck (assuming one is) it would be subject to the Council's approval through another Council decision. At this time, individual EU Member States, may notify the Council of their intent to seek ratification of the agreement by their national parliaments, a process that could take many years and would not be guaranteed. However, to cover this possibility, the Commission intends to include a provision in this second Council Decision indicating that the agreement enters into force pending ratification by national parliaments.

Discussion (U)

The Commission's Goal: (U)

(5)

b1

Deleted: to be in order to

001011

10

ho

Comment: his sentence could be clearer—I tinkered with it, but there is still room for improvement.

b1

(c)

Deleted: (b) (3)

Deleted: (b) (3)

DHS Interests: (c)

(c)

(c)

b1

Deleted:

(c)

601342

Time Constraints: (v)

(v) [b5]

(v) b1

Deleted: [b5]
Deleted:]

(v) [b5] (S) b1

The Next Step: (v)

(v) b1

Critical Issues: (✓)

(c)

(c) 1.

(c)

Formatted: Underline

Formatted: Underline

(c)

b1

(c)

Formatted: Indent: Left: 0.25"

Deleted: (b) (2)

(c) 2.

(c)

001341

~~SECRET~~

Deleted: a

(c)

b1

Deleted:

(c)

(c)

Similarly, the EU could use the precedent set by the extension of data protection principles into an area of law enforcement to further support President Barroso's proposal for a transfer of Justice and Home Affairs matters from the intergovernmental provisions of the Treaty on European Union to a community competency under the first pillar. Under this proposal, national governments would effectively cede sovereignty over these issues to the European Union, which would make decisions under the qualified majority voting regime. Under this process Member States would lose their ability to veto proposals before the Council and the Parliament would be given a formal role in the decision making process.

(c)

b1

Recommendations (c)

(c)

b1

001315

~~SECRET~~

(c) b1

(c) [b5]

Approve _____ Disapprove _____
Modify _____ Needs more discussion _____

2. 1

(c) b1

(c)

Approve _____ Disapprove _____
Modify _____ Needs more discussion _____

b1

3.
(c) b1

Approve _____ Disapprove _____
Modify _____ Needs more discussion _____

~~SECRET~~

001346

(S)

114

b1

Formatted: No underline

Deleted: cc:

001047

~~SECRET~~



Homeland Security

Date (centered)

ACTION

MEMORANDUM FOR: Recipient's Name

THROUGH: (if applicable)

FROM: Sender's Name
(Title optional)

SUBJECT: PNR Initial Critical Decisions (U)

Purpose (U)

(U)

This paragraph should include a summary of the important policy development that can be made available through regular meetings or reports. It also should include any compliance with a public request, such as to analyze the interagency working positions taken with respect to the appropriate role of the (agency) in the (agency) or to request additional information regarding

Background: The Commission's Proposal (U)

C/P&T
Mod

bl

Formatted: Tabs: 4.44", Left

(S)

001013

Perired from: Schneider MFR
- De class on: 5/2021

(49)

(163)

1/20/06

(V) Around the same time that the Council Decision is being finalized, but definitely by June 30, 2006, the Commission intends to notify DHS of its intent to terminate the agreement under the provisions of Article 7 of the Agreement. C 65

C/PST
MRA)

b1

(V)

In addition, the Commission has indicated that signing of a new instrument along the lines of their proposal would not affect the sunset provisions called for in Article 46 of the Undertakings. As a result, DHS and the EU would still be required to begin reevaluating the agreement in November 2006 and it would sunset in November 2007 if agreement to amend or continue it was not reached. In affect, this view by the decision would make any agreement signed between now and September 30th an interim arrangement.

(V)

Once a new agreement is struck (assuming one is) it would be subject to the Council's approval through another Council decision. At this time, individual EU Member States, may notify the Council of their intent to seek ratification of the agreement by their national parliaments, a process that could take many years and would not be guaranteed. However, to cover this possibility, the Commission intends to include a provision in this second Council Decision indicating that the agreement enters into force pending ratification by national parliaments.

Discussion (V)

The Commission's Goal: (V)

(S)

b1

1

(c)

b1

DHS Interests: (u)

(c)

(c)

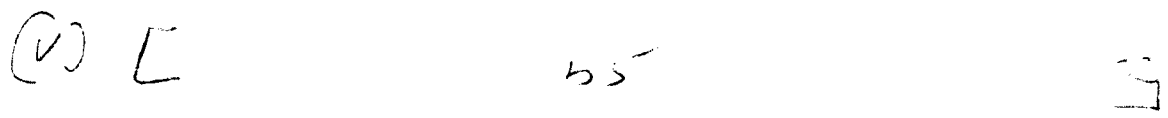
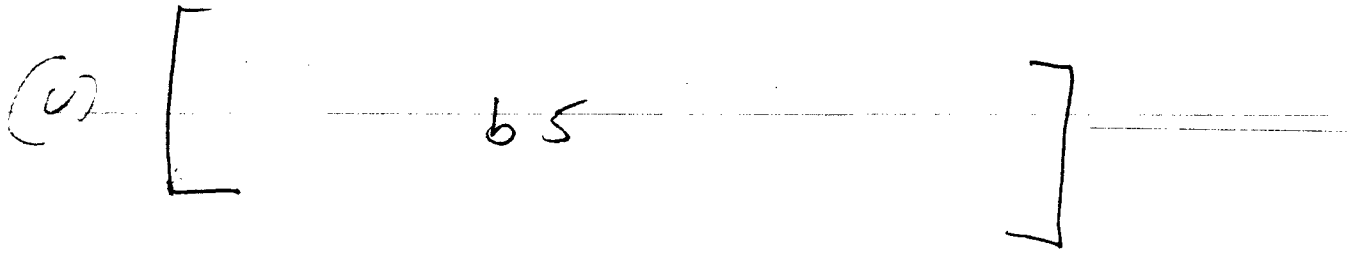
b1

(c)

001850

~~SECRET~~

Time Constraints: (U)

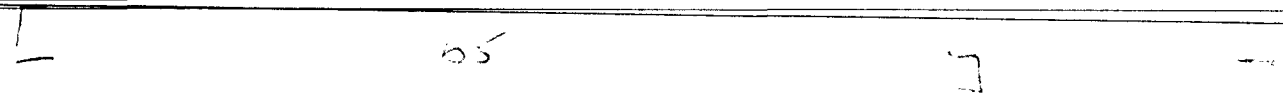


The Next Step: (U)

C/PS3
MJA)

b1

Critical Issues: (U)



~~SECRET~~

001051

✓

(c)

(c)

(c)

b1

(c)

(c)

(c)

✓

001352

Recommendations (c)

1.

(c)

b1

(c)

(c)

Approve _____ Disapprove _____

Modify _____ Needs more discussion _____

2.

(c)

b1

Approve _____ Disapprove _____

Modify _____ Needs more discussion _____

3.

(c)

b1

Approve _____ Disapprove _____

Modify _____ Needs more discussion _____

cc:

001354



DISCUSSION DOCUMENT
Analysis of United States Interests in the U.S.-EU PNR dialogue
Department of Homeland Security

July 20, 2006

Purpose

(u) To provide you with background information on the Passenger Name Record (PNR) issue and related developments concerning law enforcement information sharing with the European Union (EU) in preparation for a mid-July "un-DC."

Summary

(u) Before September 11, the government knew very little about the people getting on planes bound for the United States. After the attacks, airlines were required to provide information about their U.S.-bound passengers. Some of this information -- name, contact information, and the like -- was drawn from information supplied to the airline as part of the reservation process. DHS uses the information to screen for no-fly violators and terrorist suspects prior to arrival, and even before the plane takes off¹, protecting against mid-flight hijackings and bombings.

(u) For flights between Europe and the U.S., the data must be made available from European air carriers. EU law has long prohibited the commercial export of personal data to countries whose legal protections have not been deemed "adequate" in the view of European data protection authorities. While the U.S. has many privacy laws, it does not have an overarching data protection regime that corresponds to every aspect of European law. It has therefore been viewed as "inadequate" by European standards, and commercial data transfers to the U.S. have long been restricted by the lack of a broad adequacy finding. While the EU lacks similar requirements for the transfer of law enforcement information between the EU and third parties, a Framework Decision is currently being considered that would mirror the requirements applied in the commercial realm. <

b5

>

(u)
ASed

b1

001745

(u) CBP may automatically access PNR data from European carriers up to 72 hours in advance of a flight. During this predeparture period, information is screened against CBP automated systems and risk scores begin to be generated. In some cases, particularly airports where CBP maintains a presence through the Immigration Advisory Program, coordinated law enforcement action is also planned in advance with local authorities. Analysis continues up to arrival and is further supported by the collection of manifest information.

Derived: Schneider MFR
Declass: 20 July 2021

(164)

b1

(u) The PNR Agreement was also controversial in Europe. It was challenged by the European Parliament as insufficiently protective of EU privacy rights. On May 30 the European Court of Justice (ECJ) struck down the Agreement. But it chose a ground that was highly procedural – the equivalent under US law of the Supreme Court ducking a Fourth Amendment challenge by finding a law invalid because it exceeded Congress’s Commerce Clause power. Under EU law, commercial issues fall within the jurisdiction of the EU as part of its “First Pillar” authority. This is the authority that the EU relied on in entering the Agreement. The ECJ, however, held that the US wanted PNR data for law enforcement and public security reasons. Law enforcement and public security are exempt from the EU’s commercial data protection laws and are only partly within the EU’s authority. Instead, they fall under the “Third Pillar,” where the authority of EU central institutions (the Commission, Parliament and Court of Justice) is more limited and more authority is left to the Member States. This finding by the Court also eliminates the uncertainty that led to the signing of the agreement in the first place, specifically the fear that some Member States might bring action against air carriers under the commercial legal framework.

(u) Because the agreement was entered under the wrong authority, the Court ruled it invalid but delayed the effective date of its decision until September 30 in the hope that the jurisdictional problem could be quickly solved. To cure the problem, the EU has obtained authority from the Member States to renegotiate the PNR Agreement under the Third Pillar. As required by the Agreement, the EU also notified the United States that it will terminate the current Agreement on September 30, 2006 and has set a goal of establishing a new agreement by this date. The USG received a proposed replacement text from the Finnish Presidency on July 19th, although Commission officials have indicated that this draft may not be final.³ Commission representatives have portrayed their proposal as a technical change that would put the same agreement back in place, albeit under a different legal authority.

(u)

b1

001746

(u) CBP can share PNR data with other law enforcement agencies, but only on a case-by-case basis and only for the purpose of combating terrorism and serious transnational crimes. This restriction prevents PNR information from being shared in bulk with the intelligence and law enforcement community, and it denies those agencies direct access to the records. Broader access would allow other agencies to look for patterns in the travel of individuals not deemed to be high risk and to assess connections between passengers. ICE, for example, has expressed its frustration over losing access to this information.

(u) Both the Departments of State and Homeland Security have a number of questions regarding the legal impact of a variety of wording choices, including references to the European Convention on Human Rights. Additional policy analysis is underway and will be further driven by the decisions of the Deputies.

(S)F

b1

(S)F

Background

(u) Two converging events in Europe -- the recent European Court of Justice decision on the legality of the EU-US PNR Agreement and a draft EU Framework Decision on Exchange of Criminal Data -- have major implications for US law enforcement and security.

(u) **The EU-US PNR Agreement.** As noted, in May 2004, after substantial negotiations, the Department of Homeland Security entered into an agreement relating to the sharing of PNR information collected by air carriers flying to the United States from Europe. The Agreement was intended to resolve a perceived conflict between EU law (which limits the sharing of personal information collected by commercial entities with governmental entities) and US law (which required the collection and dissemination of PNR data). Central to the Agreement was a set of Undertakings made by Customs and Border Protection (CBP) regarding how it would treat the PNR data transmitted to it.³ Several of the limitations in those Undertakings significantly restrict US opportunities to use information for investigative and law enforcement purposes.

(u)

b1

001747

~~For Official Use Only~~

(u) The most significant of these limitations, from our perspective are the following:

(c)

(c)

b1

(c)

(c)

(c)

001713

(S)

b1

(S)

(u)

The ECJ PNR Case. The Agreement was no less controversial in Brussels. Disturbed over what it viewed as an attack on personal privacy and its own authority, the European Parliament (EP) filed two suits in the European Court of Justice (ECJ) challenging the information sharing arrangement.

(u)

On May 30, 2006, the ECJ issued its opinion in the lawsuits. The opinion did not address the merits of the EU-US PNR Agreement or the role of the Parliament. Rather, the decision turned on the lack of competence of the Commission and Council to enter into the Agreement in the first instance. The EU had based its authority on the so-called "First Pillar," which allows the EU to regulate trade and commercial matters. The ECJ held (as the US had argued earlier) that the requirement that PNR data be sent to the US was a law enforcement and national security matter. Such transfers, the court held, ~~were excluded from the data protection directive governing commercial data exports.~~ If they are to be regulated, the court implied, it would have to be done under the "Third Pillar."⁸

(u)

⁸ This concern is consistent with Executive Order 13388 and the President's Memorandum issued on December 16, 2006 to Heads of Executive Departments and Agencies on "Guidelines and Requirements in Support of Information Sharing Environment."

(S)
CIS
MPC

b1

001729

(u)

⁹ Acting under the First Pillar, the EU has also entered into a PNR sharing agreement with Canada. In light of the EU's determination that the US Undertakings provided "adequate" privacy protections, the EU-Canada

[Handwritten mark]

(u) That is what the EU proposes to do. It has obtained authority from its Member States to erect substantially the same agreement on a new foundation. In order to meet the European Court of Justice deadline, the Commission will seek to codify its position over the next couple of weeks and then will call for agreement on the new arrangement by September 30.

(S)

b1

(u) **EU Proposals on Sharing Law Enforcement Information.** If that were all that is at stake, this would be an interesting diplomatic and legal problem for DHS. But it is not. The PNR negotiations will be closely intertwined with a broader effort to establish restrictive, EU-wide rules for information sharing in the area of law enforcement. Last October the EU put forward two draft documents that concern data sharing and protection in the law enforcement context. They consist of a draft Framework Directive of the European Parliament and Council on the retention of data and a proposed Council decision on the protection of personal data in criminal matters. C

b5 =

(u) (off-
not)

b1

(S)

001750

(u) agreement authorizes Canada to share PNR data received from the EU with the US. Even though the ECJ has struck down the EU-US agreement, the EU contends that its similar agreement with Canada remains in effect. Some Canadian government sources are concerned, however, that the absence of an "adequacy" finding (which is a First Pillar concept) may now have the effect of *prohibiting* US-Canada information sharing derived from EU-originated flights.

(u) ² For example, the Draft Decision contains provisions on time limits for retention of shared data, ensuring the accuracy of shared data, logging and audit trails, as well as restrictions limiting further use of the data to the original purpose for which it was first transmitted. In effect, it borrows heavily from the PNR Agreement and the Undertakings.

[Handwritten mark]

(U) (S) (Med)

b1

(U) (S) (Med)

(U)

Communicable Diseases. One indicator of the extent to which EU data protection authorities prioritize the expansion of such roles over public safety concerns can be found in the European reaction to another US initiative relating to avian flu. If air passengers are exposed to a pandemic

(U) (S) (Med)

b1

901751

(U)

¹¹ The adequacy finding granted to the U.S. was specific to the transfer of PNR data and only extended to its transmission to CBP. The May 30th decision of the ECJ also annuls this decision by the Commission on the grounds that the Commission did not have the legal authority to grant it

(U)

¹² If adopted without the offered exemptions, the Draft Decision could conflict with a number of binding and non-binding information sharing arrangements that the United States has signed. For example, we have signed a 2003 Mutual Legal Assistance Agreement (MLAT) with the European Union and a 2001 information sharing agreement with Europol (the EU-level police agency); with respect to member states, we signed a 2003 MLAT with Germany, which builds on numerous other MLATs already in force with other EU member states. The United States also has many executive agreements and memoranda of understanding with member states under which critical information is currently being shared. Under EU law, directives supersede bilateral treaties and agreements and member states must conform their existing agreements with the directive.

Centers for Disease Control has proposed a rule requiring airlines to retain PNR for up to 60 days for that purpose. The top data protection authorities of Europe, known as the "Article 29 Working Party," have now decided that this sort of data retention violates EU privacy directives. If given effect, the Working Party's opinion would place air carriers legal jeopardy because of inconsistent legal régimes. It reflects a widespread EU view that privacy trumps even the critical public health interests of the United States.¹³

Analysis & Recommendation

(C)

(S)

b1

(C)

(S)

001752

¹³ Conversely, Paragraph 34 of the Undertakings allows for the exchange of PNR for public health purposes and neither the Commission or the Article 29 Committee have challenged the DHS-HHS MOU.

¹⁴ Unlike in 2003, this risk is present now because the Court has conclusively ruled that the transfer of PNR data is a law enforcement matter. While European integration has been the greatest in areas associated with the Common Market, law enforcement and public security is a relatively new area of activity at the community level and many responsibilities still fall to the EU Member States. The ECJ firmly placed PNR in the area of law enforcement and public security, and as result, any actions taken in this area are likely to set precedents for further community involvement in other law enforcement matters.

~~SECRET~~

b1

Conclusion

(u) In light of these risks, the USG's goal in negotiating with the EU should be either to reach agreement on an end to the PNR agreement, now that its basis has been struck down, or to modify the agreement to eliminate the most objectionable provisions. This goal is the only outcome that avoids setting a precedent of overly restrictive data protection policies in the area of law enforcement. With such restrictions in place, anything that strengthens the EU's role as primary interlocutor on law enforcement matters is likely to prove a long-term obstacle in the war on terror.

(S)

b1

Conclusion

(u) The USG has a paramount interest in ensuring that law enforcement and border control information continues to flow to the United States. In creating the Information Sharing Environment we are working to break down walls that restrict the sharing of information between Federal agencies.

(u) The PNR Agreement that the US signed with the EU in 2004 is an example of the old-style artificial limitation. We entered into the PNR Agreement based upon the EU's argument that the export of commercial information was subject to special restrictions under EU law. The European Court of Justice has now held that the information is law enforcement information, not commercial information, so that the rationale for the agreement has now dissolved.

(S)

b1

001753

~~For Official Use Only~~

(c)

b1

001751

Attachment: Excerpts from the EU data protection Directive and proposed Framework Decision.

1. DIRECTIVE 95/46/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 24 October 1995

Article 3

Scope

1. This Directive shall apply to the processing of personal data wholly or partly by automatic means, and to the processing otherwise than by automatic means of personal data which form part of a filing system or are intended to form part of a filing system.

2. This Directive shall not apply to the processing of personal data:

- in the course of an activity which falls outside the scope of Community law, such as those provided for by Titles V and VI of the Treaty on European Union and in any case to processing operations concerning public security, defence, State security (including the economic well-being of the State when the processing operation relates to State security matters) and the activities of the State in areas of criminal law,

Article 26

Derogations

1. By way of derogation from Article 25 and save where otherwise provided by domestic law governing particular cases, Member States shall provide that a transfer or a set of transfers of personal data to a third country which does not ensure an adequate level of protection within the meaning of Article 25 (2) may take place on condition that:

- (a) the data subject has given his consent unambiguously to the proposed transfer; or
- (b) the transfer is necessary for the performance of a contract between the data subject and the controller or the implementation of precontractual measures taken in response to the data subject's request; or
- (c) the transfer is necessary for the conclusion or performance of a contract concluded in the interest of the data subject between the controller and a third party; or
- ~~(d) the transfer is necessary or legally required on important public interest grounds, or for the establishment, exercise or defence of legal claims; or~~
- (e) the transfer is necessary in order to protect the vital interests of the data subject; or
- (f) the transfer is made from a register which according to laws or regulations is intended to provide information to the public and which is open to consultation either by the public in general or by any person who can demonstrate legitimate interest, to the extent that the conditions laid down in law for consultation are fulfilled in the particular case.

2. Without prejudice to paragraph 1, a Member State may authorize a transfer or a set of transfers of personal data to a third country which does not ensure an adequate level of protection within the meaning of Article 25 (2), where the controller adduces adequate safeguards with respect to the protection of the privacy and fundamental rights and freedoms of

individuals and as regards the exercise of the corresponding rights; such safeguards may in particular result from appropriate contractual clauses.

3. ~~The Member State shall inform the Commission and the other Member States of the authorizations it grants pursuant to paragraph 2.~~

If a Member State or the Commission objects on justified grounds involving the protection of the privacy and fundamental rights and freedoms of individuals, the Commission shall take appropriate measures in accordance with the procedure laid down in Article 31 (2).

Member States shall take the necessary measures to comply with the Commission's decision.

4. Where the Commission decides, in accordance with the procedure referred to in Article 31 (2), that certain standard contractual clauses offer sufficient safeguards as required by paragraph 2, Member States shall take the necessary measures to comply with the Commission's decision.

CHAPTER IV TRANSFER OF PERSONAL DATA TO THIRD COUNTRIES

Article 25

Principles

1. The Member States shall provide that the transfer to a third country of personal data which are undergoing processing or are intended for processing after transfer may take place only if, without prejudice to compliance with the national provisions adopted pursuant to the other provisions of this Directive, the third country in question ensures an adequate level of protection.

2. The adequacy of the level of protection afforded by a third country shall be assessed in the light of all the circumstances surrounding a data transfer operation or set of data transfer operations; particular consideration shall be given to the nature of the data, the purpose and duration of the proposed processing operation or operations, the country of origin and country of final destination, the rules of law, both general and sectoral, in force in the third country in question and the professional rules and security measures which are complied with in that country.

3. The Member States and the Commission shall inform each other of cases where they consider that a third country does not ensure an adequate level of protection within the meaning of paragraph 2.

4. Where the Commission finds, under the procedure provided for in Article 31 (2), that a third country does not ensure an adequate level of protection within the meaning of paragraph 2 of this Article, Member States shall take the measures necessary to prevent any transfer of data of the same type to the third country in question.

5. At the appropriate time, the Commission shall enter into negotiations with a view to remedying the situation resulting from the finding made pursuant to paragraph 4.

6. The Commission may find, in accordance with the procedure referred to in Article 31 (2), that a third country ensures an adequate level of protection within the meaning of paragraph 2 of this Article, by reason of its domestic law or of the international commitments it has entered

001756

into, particularly upon conclusion of the negotiations referred to in paragraph 5, for the protection of the private lives and basic freedoms and rights of individuals.

Member States shall take the measures necessary to comply with the Commission's decision.

2. Proposal for a COUNCIL FRAMEWORK DECISION on the protection of personal data processed in the framework of police and judicial coöperation in criminal matters

Article 15

Transfer to competent authorities in third countries or to international bodies

1. Member States shall provide that personal data received from or made available by the competent authority of another Member State are not further transferred to competent authorities of third countries or to international bodies except if such transfer is in compliance with this Framework Decision and, in particular, all the following requirements are met.

(a) The transfer is provided for by law clearly obliging or authorising it.

(b) The transfer is necessary for the purpose the data concerned were transmitted or made available for or for the purpose of the prevention, investigation, detection or prosecution of criminal offences or for the purpose of the prevention of threats to public security or to a person, except where such considerations are overridden by the need to protect the interests or fundamental rights of the data subject.

(c) The competent authority of another Member State that has transmitted or made available the data concerned to the competent authority that intends to further transfer them has given its prior consent to their further transfer.

(d) An adequate level of data protection is ensured in the third country or by the international body to which the data concerned shall be transferred.

2. Member States shall ensure that the adequacy of the level of protection afforded by a third country or international body shall be assessed in the light of all the circumstances for each transfer or category of transfers. In particular, the assessment shall result from an examination of the following elements: the type of data, the purposes and duration of processing for which the data are transferred, the country of origin and the country of final destination, the general and sectoral rules of law applicable in the third country or body in question, the professional and security rules which are applicable there, as well as the existence of sufficient safeguards put in place by the recipient of the transfer.

3. The Member States and the Commission shall inform each other of cases where they consider that a third country or an international body does not ensure an adequate level of protection within the meaning of paragraph 2.

4. Where, under the procedure provided for in Article 16, it is established that a third country or international body does not ensure an adequate level of protection within the meaning of paragraph 2, Member States shall take the measures necessary to prevent any transfer of personal data to the third country or international body in question.

001757

For Official Use Only

5. In accordance with the procedure referred to in Article 16, it may be established that a third country or international body ensures an adequate level of protection within the meaning of paragraph 2, by reason of its domestic law or of the international commitments it has entered into, for the protection of the private lives and basic freedoms and rights of individuals.

6. Exceptionally, personal data received from the competent authority of another Member State may be further transferred to competent authorities of third countries or to international bodies in or by which an adequate level of data protection is not ensured if absolutely necessary in order to safeguard the essential interests of a Member State or for the prevention of imminent serious danger threatening public security or a specific person or persons.

001758