

EDWARD HASBROUCK

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11 August 2010

Landesbeauftragter für Datenschutz und Informationsfreiheit Nordrhein-Westfalen
(North Rhine-Westphalia Commissioner for Data Protection and Freedom of Information)
Postfach 20 04 44
40102 Düsseldorf
GERMANY

telephone 0+49-211-38424-0
poststelle@ldi.nrw.de

Complaint of Data Protection Violation

This is a complaint against the airline Deutsche Lufthansa Aktiengesellschaft (“Lufthansa”) for violation of its obligations under the Bundesdatenschutzgesetz (German Federal Data Protection Act, “FDPA”) and the applicable laws of Nordrhein-Westfalen.

On 5 May 2010 I made a request to Lufthansa for access to the personal data about me processed by or on behalf of Lufthansa. After an exchange of e-mail messages from Lufthansa to me on 10 June 2010, and from me to Lufthansa on 14 June 2010, Lufthansa replied to my request by letter and e-mail on 5 July 2010. Copies of this correspondence are attached.

Lufthansa has failed to provide all of the information required by German law, for the reasons discussed in my e-mail message to Lufthansa of 14 June 2010, and as follows.

(1) Lufthansa claims that it is not required to provide an explanation of the logic used in making automated decisions on the basis of my data, because “the processing of passenger data by Lufthansa does not involve automated individual decision making in the sense of the FDPA.”

Lufthansa's error is to try to limit its responsibility to accounting for the logic of processing “by” Lufthansa, when both the German law (in the unofficial English translation) and the European Data Protection Directive refer to automated processing and decision-making “on the basis of” personal data obtained from them. Data obtained from Lufthansa (directly or through Lufthansa's agents and contractors) was provided to the U.S. Government, and automated processing was conducted by the U.S. Government “on the basis of” this data about me obtained from Lufthansa. Lufthansa is required to provide me with a full accounting of the logic used for this processing “on the basis of” my data. (I have suggested that this could best be done through provision of the source code for the relevant processing software.) If Lufthansa is unable to provide such an accounting of the logic used for this processing, it was a violation of the law for Lufthansa to allow this data to be transferred to the U.S. Government.

(2) Lufthansa claims that the EU Code of Conduct for Computerised Reservation Systems “supersedes any German law that could be applied concerning these matters” and “assigns the controllership of PNR's generated by travel agencies to the respective system vendor, in our case Amadeus.... We are not the controller of this data.”

This is erroneous, as a matter of law: (A) The code of conduct for CRS's does not, and could not, “supersede” or define the meaning of German law. The Council of the European Union has no authority to enact, amend, or interpret German law. (B) There can be more than one controller of the same data. The fact that Amadeus is a controller of some of this data has no effect on whether Lufthansa is also a controller of some or all of this data. Both the FDPA and the EU Data Protection Directive define “a” data controller, not “the” data controller.

As I discussed in my e-mail to Lufthansa, the only way to interpret the Code of Conduct for CRS's, consistent with its legislative history (in which I was a participant) and the authority of the EU and with the FDPA, is as imposing additional responsibilities on the CRS's (enforceable by the European commission), without having any effect on the existing responsibilities of the data controller or controllers – including Lufthansa – as defined under the FDPA (enforced by German authorities such as your agency). The only relevant issue is whether Lufthansa satisfies the definition of a data controller in the FDPA, which it clearly does.

(3) Lufthansa claims that, “we only have access to the Amadeus system with the RT or RTH transaction to retrieve your PNR or PNR-History. No more information is available to us because we are not the controller of this data.” There are at least four problems with this claim: (A) Lufthansa has not provided me with the Amadeus PNR or PNR History, which it admits it could retrieve. (B) Lufthansa is, as discussed above, a controller of this data, as defined in German law. (C) Lufthansa's agents and contractors – including both Airtrade International (Vayama.com) as Lufthansa's agent, and Amadeus as a contractor acting on behalf of Amadeus – have access to additional information which Lufthansa has not provided to me. Lufthansa is responsible for their actions as its agents and contractors, just as Lufthansa is responsible for the actions of Lufthansa employees. (D) Whether Lufthansa is legally defined as a data controller has no effect on what information is, in fact, available to Lufthansa. What information is available to Lufthansa is determined by the technical capabilities of the various interconnected systems, and by the terms of Lufthansa's contracts with Amadeus and with Lufthansa's agents. These contracts are not available to me, but I believe that when, in the course of your investigation, you review Lufthansa's agency appointment agreement with Airtrade International (Vayama.com) and Lufthansa's contract(s) with Amadeus, you will find that they define Lufthansa as the owner of this data and entitle Lufthansa to demand this information from Lufthansa's agents and contractors, including Amadeus.

(4) Lufthansa claims that, “No travel agency in the United States neither Airtrade International (Vayama.com) nor your own company represents themselves as Lufthansa agencies. They are both IATA agencies that have no direct relation (except for marketing purposes like our expert program) and do not process data for us. Lufthansa is not responsible in any way for the handling of personal data by these agencies in the U.S.A.”

All of this is clearly and unquestionably false, as a matter of fact and of U.S. and German agency law. (A) Lufthansa has appointed thousands of travel agencies in the U.S.A., including Airtrade International (Vayama.com) to represent it as agents for Lufthansa. These agencies represent themselves, correctly, as Lufthansa agencies. They are called “travel agents” because they are appointed by the airlines to act as the airlines' agents. (B) Lufthansa describes its agents as its agents in Lufthansa's terms and conditions of carriage and in the tariffs it has filed with the German, U.S., and numerous other governments. (C) Some of these agents are appointed directly

by airlines such as Lufthansa. Others are appointed by intermediaries to whom carriers have delegated authority to appoint sub-agents. Whether the agency relationship is “direct” is legally irrelevant. (D) While IATA accredits and assigns numeric codes to travel agencies, each IATA member airline retains the authority to decide which agents to appoint to represent them. IATA describes its rules as applying to “IATA Member Airlines and their appointed agents”, making clear that IATA-accredited travel agencies are appointed by, and act as agents for, IATA member airlines. See: <<http://www.iata.org/whatwedo/travel-tourism/Pages/faq.aspx>>. (E) I am not privy to these agreements, but I believe that, upon investigation, you will find that Lufthansa is party, either directly or through an intermediary, to an agency agreement appointing Airtrade International (Vayama.com) as a Lufthansa agency authorized to act as an agent for Lufthansa, to hold itself out to the public as an agent for Lufthansa, and to accept reservations and payments and issue tickets as an agent for Lufthansa. (E) I dealt with Airtrade International (Vayama.com) and provided personal information to them solely in their capacity as an agent of Lufthansa, and solely for the purpose of making a reservation and buying a ticket from Lufthansa as the principal for whom they acted as agent. At all times in the transaction, Lufthansa was the sole principal, and my contract of carriage was solely with Lufthansa. (F) Lufthansa charged my credit card, and the charge appeared on my credit card bill as being from Lufthansa. If Airtrade International (Vayama.com) had not been appointed by Lufthansa as an agent authorized to execute contracts on behalf of Lufthansa as principal, it would have been a violation of Lufthansa's merchant agreement with the credit card company to process the charge in the name of Lufthansa on behalf of a third part who was not acting as Lufthansa's agent. (G) Lufthansa charged my credit card, accepted my payment, and accepted my tickets. Even if Lufthansa had not already explicitly appointed Airtrade International (Vayama.com) as a Lufthansa agent, Lufthansa ratified their authority to act as an agent for Lufthansa by processing the credit card charge, accepting payment, and honoring the tickets issued through them.

For all of these reasons, Lufthansa is fully responsible for the conduct of its agents, including their collection and processing of personal data on Lufthansa's behalf and their compliance with German law, including the FDPD and any other data protection laws.

Lufthansa is required to provide, on request, access for data subjects to personal data collected, processed, or held by Lufthansa's agents on Lufthansa's behalf, as well as an accounting of who has or might have accessed this data and any transfers of the data to entities outside the EU. Lufthansa has failed or refused to do this, in violation of the law.

(5) Lufthansa has ignored my request for an accounting of who has received my data, or might have received it, and in particular what entities (including both government agencies and commercial or private entities) outside the territory of the EU might have done so. It is unclear whether Lufthansa (and its agents and contractors) don't keep access logs, or whether they do keep such logs but have withheld them from me. Either action violates the law.

I request that you take appropriate action to investigate and act on this complaint, to compel Lufthansa to provide the information I have requested and which is required by law, to prohibit any further transfers of personal data by Lufthansa in violation of the law, and to impose sanctions on Lufthansa for its failure to comply with the law.

Should you have any questions or require further information from me to facilitate your investigation and action on this complaint, please feel free to contact me by telephone at +1-415-824-0214 in San Francisco (German time – 9 hours) or by e-mail at <edward@hasbrouck.org>. If you believe that a face-to-face meeting with me would be useful, please let me know, as it is possible that I will be in Europe at some time during your investigation of this complaint.

I apologize for writing to you in English. I know no German. My contract with Lufthansa was entered into in English, through the English-language Web site of an agent for Lufthansa in the USA. All of my dealings with Lufthansa have been in English. If anything in this complaint is not clear, please let me know and I will do my best to clarify it.

Sincerely,

Edward Hasbrouck

Attachments:

- A. Letter from Edward Hasbrouck to Lufthansa, 5 May 2010
- B. E-mail from Lufthansa to Edward Hasbrouck, 10 June 2010
- C. E-mail from Edward Hasbrouck to Lufthansa, 14 June 2010
- D. Letter and e-mail form Lufthansa to Edward Hasbrouck, 5 July 2010

cc: Dr. Barbara Kirchberg-Lennartz
Konzern-Datenschutzbeauftragte (Corporate Data Protection Officer)
Deutsche Lufthansa AG
FRA DSB
Lufthansa Aviation Center
D-60546 Frankfurt/Main
GERMANY
(by e-mail to <barbara.kirchberg-lennartz@dlh.de>)

EDWARD HASBROUCK

1130 Treat Avenue, San Francisco, CA 94110, USA

phone +1-415-824-0214

edward@hasbrouck.org

5 May 2010

Subject Access Request

Lufthansa Group Data Protection Manager
Dr. Barbara Kirchberg-Lennartz
Deutsche Lufthansa AG
FRA DSB
60546 Frankfurt
GERMANY

e-mail: cgndsb@dlh.de

Subject: Request for access to the personal data processed by or on behalf of your company

Dear Dr. Kirchberg-Lennartz:

The undersigned, Edward Hasbrouck, a citizen of the USA residing at 1130 Treat Ave., San Francisco, CA 94110, USA, files this request with your company Deutsche Lufthansa AG (IATA code "LH") pursuant to Section 19 of the German Federal Data Protection Act (Bundesdatenschutzgesetz), as last amended by Article 1 of the Act of 14 August 2009 and as implemented pursuant to article 12 of the European Data Protection Directive 95/46/EC.

I request that you provide me with all of the information to which I am entitled pursuant to that Act and that Directive.

I note in particular that clause (3) of Section 6a of the Data Protection Act (BDSG) as amended provides that, (in the unofficial English translation provided by the German Federal Commissioner for Data Protection and Freedom of Information at <bfdi.bund.de>), "The data subject's right of access under Sections 19 and 34 shall also extend to the logic involved in the automated processing of his or her personal data." I also note that it is the responsibility of the data controller to provide such an explanation of the processing logic, regardless of whether the processing itself is carried out by the data controller, their agent or contractor, or a third-party or fourth-party recipient of data obtained from or on behalf of the data controller. Accordingly, I request that you inform me of the logic to be involved in any such processing, whether by your company or by any recipients of data pertaining to me obtained from or via your company. This includes, but is not limited to, the complete logic of the processing (including the algorithms and the source code of any computer programs implementing the processing logic) for processing of my data, obtained from or via your company, by the Department of Homeland Security or any other agencies of the government of the USA or other governments for purposes such as to determine whether to conduct more intrusive or intensive questioning or search of my person or luggage, whether to identify me as a "selectee" or for "secondary screening", whether to permit me to check in for or board any flight, and whether to permit me to depart from any country or enter any other.

In accordance with the European Data Protection Directive, I also specifically request that you inform me whether any of my personal data have been transferred outside of the national

territory of Germany, in whatever form or by whatever means, whether to governmental or commercial or other entities, and if so exactly which data, when, to whom, for what purposes or programs such as the USA's "Automated Targeting System" (ATS) or "Advance Passenger Information System" (APIS), and subject to what enforceable contractual commitments from the recipient, including to which agency or agencies of the government of the USA and to which commercial entity or entities in the USA or other countries, including but not limited to PNR hosting services (such as computerized reservation systems or global distribution systems), PNR and transaction processing services (such as the Airlines Reporting Corporation (ARC), IATA's Bank Settlement Plan (BSP) and its area banks, and the Amadeus division formerly known as Airline Automation, Inc.), and travel transaction and customer data aggregation and analysis services (such as the Vistrio joint venture of Sabre and the Equitec subsidiary of Axiom).

I also request that you inform me of your policies for use, access, retention, and destruction of this data, and those of any recipients of this data, particularly those outside Germany.

This request includes any data collected collected, maintained, accessed, processed, or disclosed to third parties by your company or by any of your agents (including but not limited to your agent Airtrade International Inc., trading as "Vayama.com", a subsidiary of BCD Holdings NV, a Netherlands corporation, which was appointed by LH and acted as agent for LH as principal in the execution of my contract of carriage with LH), sub-agents, contractors, and subcontractors, including computerized reservation systems (CRS's), PNR hosting companies, codesharing, alliance, other "partner" airlines and operators of trains or buses (such as trains and buses with Lufthansa "flight" numbers), or other parties.

If you, your agent(s), and/or your contractor(s) subscribe to any computerized reservations system (CRS), I request in accordance with Article 11, Section 6 of the EU Code of Conduct for CRS's (Regulation (EC) No 80/2009 of the European Parliament and of the Council of 14 January 2009), that you inform me of the name and address of the CRS system vendor(s), the purposes of the processing, the duration of the retention of individual data and the means available to the data subject of exercising her or his access rights.

With respect to any PNR data, I specifically request that you provide copies of all my PNR's (including "history" and ticket records) from all CRS's or hosting systems, including both the PNR's from your "host" system and PNR's created by your agent(s), other airlines (including codeshare airlines), or other codeshare operators (such as train or bus operators) in other CRS's or reservation systems.

This request includes all personal data processed by you of which I am the data subject, including but not limited to:

1. Airline hosting and/or travel agency Passenger Name Records (PNR's)
2. PNR histories
3. Cancelled PNR's and their histories
4. Archived or "purged" PNR's and their histories
5. System logs of access to these PNR's and PNR histories, including any records of retrieval or other access to my PNR or other data by airline or CRS offices or travel agencies, and including records of what data was accessed, by whom, when, and from where (including whether such access was made from outside Germany or the EU)
6. Departure control system records and access logs

7. Advance Passenger Information (API) records and logs
8. AIRIMP, EDIFACT, or other message records
9. Ticketing records including complete virtual coupon records or ticket images
10. Bank Settlement Plan (BSP), interline, or other settlement records
11. Credit card processing, financial, billing, or payment records
12. Frequent flyer account records
13. Customer, Web user, or traveller records or profiles
14. Web site visitor, usage, and query records and logs, including all records of which of my PNR, profile, or other personal data was accessed via airline, CRS, or travel agency Web sites (including via online reservation management, check-in, or PNR-viewing sites, and including but not limited to VirtuallyThere.com, ViewTrip.com, MyTripAndMore.com, and/or CheckMyTrip.com), including by whom, when, and from where (including whether such access was made from outside Germany or the EU)

This request includes any records collected, maintained, accessed, processed, or disclosed to third parties by any of your agents, sub-agents, contractors, or subcontractors, including but not limited to any alliance, codeshare, marketing, operational, or other "partners" or parties.

I note that some of these records, particularly CRS or hosting system logs showing the terminal addresses, user sines, and exact queries which were used to access my data from those systems, may not routinely be retained for more than a few days, at most. Accordingly, I specifically request that you take immediate steps to ensure the retention of this data while this request is pending, including notification of this request to the relevant departments within your organization and to each of your agents, sub-agents, contractors, or subcontractors who might have had access to my data. Time is of the essence to ensure the retention of this data.

This request includes, but is not limited to, personal data pertaining to my journey as follows:

LH455	05APR2010	SFO-FRA
LH4576	06APR2010	FRA-BRU
LH6911 (bus)	23APR2010	Strasbourg-FRA
LH418	23APR2010	FRA-IAD
LH9368 (operated by UA)	23APR2010	IAD-SFO

LH record locator Y55IZ2

Vayama.com record locator KLL972

United Airlines (UA) codeshare record locator N3VQCW

electronic ticket number 220 9862793403

I have attached copies of my boarding passes for this journey, and of my passport as evidence of my identity. I hereby certify under penalty of perjury that I am the person identified by this passport and to whom this data pertains.

Please note that, should you not answer this request within the legally required maximum, or should your answer fail to fully answer my request, I reserve the right to bring the case before the competent judicial authorities, and/or to inform the German Federal Commissioner for Data Protection and Freedom of Information of your failure to answer.

Should you have any questions or require further information from me to expedite your response to this request, please contact me by telephone at +1-415-824-0214 in San Francisco (FRA time – 9 hours) or by e-mail at <edward@hasbrouck.org>.

Sincerely,

Edward Hasbrouck
1130 Treat Ave.
San Francisco, CA 94110
USA
+1-415-824-0214
edward@hasbrouck.org

Date: Thu, 10 Jun 2010 12:07:23 +0200
From: <barbara.kirchberg-lennartz@dlh.de>
To: <edward@hasbrouck.org>
Cc: <juergen.weber@dlh.de>,
<nicola.roth@dlh.de>

Dear Mr. Hasbrouck,

parts of your request, dated May 5th,2010, should not be handled by us, because we are not the controller of PNR data, which is collected in the course of activities of the AMADEUS computer reservation system for the purpose of making reservations or issuing flight tickets on Lufthansa flights. According to Article 11 of the Code of Conduct for computerised reservation systems of 14th January 2009, the system vendor - in our case AMADEUS - is with regard to the processing of that data to be considered as a data controller in accordance with Article 2 (d) of Directive 95/46/EC.

This includes the handling of data by the sales agent Airtrade International (Vayama.com), who acts as subscriber of the AMADEUS GDS.

You may request access to such data, of which you are the data subject at the following address:

AMADEUS Data Processing GmbH
Mr. Oboama Addy
Senior Corporate Counsel & Group Data Protection Officer
Berghamer Strasse 6
D-85435 Erding

Email: oaddy@amadeus.com

Apart from that we will handle your access request pursuant to Section 34 Federal Data Protection Act (FDPA). Section 19 refers to public bodies and is not applicable to Lufthansa AG as private body.

According to section 34, paragraph 1, sentence 1, we will inform you about the personal data

* we collected concerning your flights LH 455, 05 April 2010, LH 4576, 06 April 2010, LH 6911, 23 April 2010, LH 418, 23 April 2010, LH 9368, 23 April 2010

* the recipients or categories of recipients to which the data has been transferred in order to fulfill the carriage contract

* the purpose of storage of that data.

An extended right of access according to section 6a FDPA is not given, as the processing of passenger data by Lufthansa does not involve automated individual decision making in the sense of that law.

If it is acceptable for you and if we could use encrypted mailing via PGP, we would like to send our material via email. Please give us your consent to this. Otherwise we send a letter via DHL.

We ask for your understanding, that we will not be able to answer your request earlier as at the end of calendar week 27.

Kind regards,

Dr. Barbara Kirchberg-Lennartz

>
> Von: KIRCHBERG-LENNARTZ, BARBARA
> Gesendet: Donnerstag, 27. Mai 2010 12:57
> An: 'edward@hasbrouck.org'
> Cc: WEBER, JUERGEN FRA DSB; ROTH, NICOLA
> Betreff: Notice of status
>

> Dear Mr. Hasbrouck,
>
> today, May 27th, 2010, we received your letter dated May 5th, 2010,
> subject access request.
>
> We will process your request as soon as possible and will get back to
> you in written form.
>
> Kind regards
> Dr. Barbara Kirchberg-Lennartz
> Corporate Data Protection Officer
>
>
> _____
> Dr. Barbara Kirchberg-Lennartz
> Konzern-Datenschutzbeauftragte
>
> Deutsche Lufthansa AG
> FRA DSB
> Lufthansa Aviation Center
> D-60546 Frankfurt/Main
> Tel.: +49 (0)69/ 696 5620
> Mobil: +49 (0)151 / 5892 1309
> Fax: +49 (0)69 / 696 98 5620
> E-Mail: barbara.kirchberg-lennartz@dlh.de
>
> www.lufthansa.com
> klicken, buchen und fliegen

Sitz der Gesellschaft / Corporate Headquarters: Deutsche Lufthansa Aktiengesellschaft, Koeln, Registereintragung / Registration: Amtsgericht Koeln HR B = 2168

Vorsitzender des Aufsichtsrats / Chairman of the Supervisory Board: Dipl.-Ing. Dr.-Ing. E.h. Juergen Weber

Vorstand / Executive Board: Wolfgang Mayrhuber (Vorsitzender / Chairman), Dr. Christoph Franz (Stellvertretender Vorsitzender / Deputy Chairman), Stephan Gemkow, Stefan H. Lauer

To: <barbara.kirchberg-lennartz@dlh.de>
Subject: Re: Your access request: new status
Cc: <juergen.weber@dlh.de>, <nicola.roth@dlh.de>
Date: Mon, 14 Jun 2010 18:52:59 -0700

Dear Dr. Kirchberg-Lennartz:

Thank you for your e-mail message of 10 June 2010. This is the first response I have received to my letter and e-mail to you of 5 May 2010.

Unfortunately, your message appears to indicate that Lufthansa is unwilling to accept your responsibilities under the German Federal Data Protection Act, particularly with respect to (a) your responsibility for the actions of your agents and contractors (including ticketing agents and Computerized Reservation Systems (CRS's) used by you and your agents) and (b) your responsibility to provide an accounting of the logic used in making automated decisions on the basis, in whole or in part, of personal data obtained from you, regardless of whether those decisions were made by you or by third parties who obtained personal data from you.

Your message also appears to misstate several material facts.

I discuss these issues in detail below.

On 10 Jun 2010 at 12:07, "barbara.kirchberg-lennartz@dl" <barbara.kirchberg-lennartz@dlh.de>> wrote:

> parts of your request, dated May 5th,2010, should not be handled by us,
> because we are not the controller of PNR data,

I question the truth of this claim, since I believe that in fact your contracts with Amadeus probably provide that you retain control of personal data, such as mine, which you and/or your agents or other contractors (including other CRS's) provide to Amadeus.

Is it your claim that Lufthansa exercises no control over personal data, once it is provided by you or your agents or other contractors (including other CRS's) to Amadeus? If so, your transfer of my personal data to Amadeus -- without retaining control over its subsequent use, onward transfer, retention, destruction, etc., so that you were no longer a controller of this data -- would be a serious violation of the German Federal Data Protection Act, the EU Data Protection Directive, and the Code of Conduct for Computerized Reservation Systems.

> which is collected in the course of activities of the AMADEUS computer
> reservation system for the purpose of making reservations or issuing
> flight tickets on Lufthansa flights.

To the best of my knowledge and belief, this claim is factually false.

I had no dealing whatsoever, at any time in the course of the transaction and travel to which this request pertains, with Amadeus or any other CRS. I did not provide any data to Amadeus, only to Lufthansa. Any data pertaining to me obtained by Amadeus (or any other CRS) related to my journey on Lufthansa was obtained from you and/or your agents or contractors (including, potentially, other CRS's), not from me.

If you have some evidence to support a claim that I provided personal data to Amadeus, and that they obtained such data other than through you, your agents, or others of your contractors, that evidence would itself constitute personal data pertaining to me, and would be part of the personal data which you are required to provide to me in response to this request for all of your data about me.

In the absence of such evidence (which I do not believe exists), I reiterate my demand for all personal data pertaining to me controlled by you, your agents, or your contractors, including Amadeus and any other

CRS's as well as codeshare or other airlines, to which you, your agents, or your contractors have disclosed it or allowed it to be accessed.

> According to Article 11 of the Code of Conduct for computerised
> reservation systems of 14th January 2009, the system vendor - in our case
> AMADEUS - is with regard to the processing of that data to be considered as
> a data controller in accordance with Article 2 (d) of Directive 95/46/EC.

At least in the English-language version of the Code of Conduct for CRS's, the section quoted uses the pronoun "a", not "the". While Amadeus may also be "a" data controller, the use of "a" rather than "the" makes clear that the designation of the CRS as a data controller was intended to supplement, not replace, the responsibility of any other data controller, which in most such cases would of course be an airline.

The legislative history of the Code supports this interpretation. It was clear from the discussion by the European Commission preceding the adoption of the amendment to the Code containing this clause (which was, in part, a response to comments which I had submitted to the Commission during its public consultation) that it was intended to avoid a situation in which a data subject was unable to obtain redress because neither the CRS, the airline, nor the airline's agent admitted to being a data controller. It was intended to provide additional responsibility for the CRS, not to eliminate any existing responsibility of any other party.

Moreover, the Code of Conduct for CRS's could not, and did not, override the existing provisions of either the Data Protection Directive or the German Federal Data Protection Act, or alter Lufthansa's responsibilities under that Directive and Act. Paragraph 21 of the preamble to the regulation adopting the amended Code of Conduct for CRS's provides that:

"The protection of individuals with regard to the processing of personal data is governed by Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data. The provisions of this Regulation particularise and complement Directive 95/46/EC with regard to the activities of a CRS."

Since the Code of Conduct for CRS's (a) is "complementary" to the Data Protection Directive, and (b) relates solely to "the activities of a CRS", it has no effect on the responsibilities of Lufthansa or your agents.

Amadeus may be a data controller for some of the data about me which they obtained from you and/or your agents or other contractors, as may other CRS's. But Lufthansa is also a data controller for all of this data obtained from you and/or your agents or other contractors.

> This includes the handling of data by the sales agent Airtrade
> International (Vayama.com), who acts as subscriber of the AMADEUS GDS.

I have, as yet, no information as to whether Airtrade International (Vayama.com) subscribes to Amadeus and/or to other CRS's. But that is simply irrelevant to your responsibility for their actions as your agent.

Please clarify: Is it your claim that you are not responsible for the actions of your agents? If so, this would be a profound breach of your duties under the German Federal Data Protection Act and, I believe, under the applicable German contract law, under both of which the principal is liable for the actions of its agents.

When you appoint an agent to act on your behalf, and they do so, you are liable for their actions, regardless of whether that agent is an individual Lufthansa employee or a corporation appointed as your agent.

Neither the Data Protection Directive nor the German Federal Data Protection act were intended to alter the existing general legal responsibility of the principal for the actions of its agents. Neither

the Directive nor the Act were intended to require an individual dealing with a large corporation such as Lufthansa, in order to exercise their rights with respect to their personal data, to interrogate each of the individual employees and other agents of the airline with whom they deal in the course of their journey -- ticket agents, ground handling agents, and so forth -- as to their individual identity, status, and contact details, or to make separate access requests to each of those agents.

Lufthansa itself does not disclose the identity or status of these agents. You represent them, and they represent themselves, simply as agents of Lufthansa. Your customers are entitled to regard them as your agents, and to hold you responsible for their actions as your agents.

For example, I travelled on a "Lufthansa highway bus" with a Lufthansa flight number. Your Web site does not say whether this bus is driven by a Lufthansa employee, or by an employee of a contractor. The driver wears a uniform with a Lufthansa logo, and identifies himself as operating the bus "for Lufthansa", i.e as your agent. Whether he is a Lufthansa employee or an employee of a contractor is irrelevant to your legal obligations.

Similarly, I have no way to know whether the ground staff who checked me in at San Francisco International Airport were employees of Lufthansa, employees of a codeshare airline acting as your ground handling agent, or employees of another third-party ground handling agent. The flight carried three flight numbers of other airlines in addition to the Lufthansa flight number, and the same staff were checking in passengers for all four flight numbers, so clearly at least some of the airlines were being represented by agents who were not their own employees, but were employees of other codeshare airlines acting as their agents.

As a practical matter, it is impossible -- and unnecessary -- for customers to determine whether your agents are actually employed by you or by individuals or corporations acting as your agents and contractors.

Airtrade International (Vayama.com) represented itself to me as an agent of Lufthansa. According to their terms of service, when they issue tickets for a scheduled airline, they act **solely** as an agent of the carrier. I dealt with them **solely** on that basis. My contract of carriage, executed by them solely in their capacity as your agent, was with Lufthansa. My credit card statement shows that the charge for my tickets was made by Lufthansa. My tickets were issued by Lufthansa.

By charging my credit card, and by accepting these tickets, you ratified the authority of Airtrade International (Vayama.com) to act as your agent, and to bind you to contracts of carriage to which you are the principal.

> You may request access to such data, of which you are the data subject at
> the following address:

>
> AMADEUS Data Processing GmbH
> Mr. Oboama Addy
> Senior Corporate Counsel & Group Data Protection Officer
> Berghamer Strasse 6
> D-85435 Erding
>
> Email: oaddy@amadeus.com

Thank you for informing me of my additional rights to obtain some of this information (I still do not know what information about me you and/or your agents or other contractors including other CRS's provided to Amadeus, and look forward to receiving this) from Amadeus, as well as from you.

However, I am not obliged to withdraw my request for this information from you, and I do not wish to withdraw my request. I reiterate my demand for a complete accounting of all my personal data for which you are a controller, including data obtained via, held by, processed by, or disclosed to any of your your agents (including Airtrade International /

Vayama.com) or contractors, including Amadeus and any other CRS's as well as any codeshare or other airlines who had access to my data.

> According to section 34, paragraph 1, sentence 1, we will inform you
> about the personal data
> * we collected concerning your flights LH 455, 05 April 2010, LH 4576, 06
> April 2010, LH 6911, 23 April 2010, LH 418, 23 April 2010, LH 9368, 23
> April 2010 * the recipients or categories of recipients to which the data
> has been transferred in order to fulfill the carriage contract * the
> purpose of storage of that data.

I trust that when you refer to "the personal data we collected", you include in that "we" all Lufthansa employees, agents, and contractors, for whose actions you are responsible as the principal.

> An extended right of access according to section 6a FDPA is not given, as
> the processing of passenger data by Lufthansa does not involve automated
> individual decision making in the sense of that law.

You refer to processing "by Lufthansa". At least in the English-language translation of the German Federal Data Protection Act, and in the English-language version of the Data Protection Directive, the obligation to provide such an explanation of the logic used in making decisions is determined by whether the decision is made *on the basis of* data obtained from you, regardless of whether the decisions are made *by* you.

So the fact that Lufthansa itself may have carried out no such processing is irrelevant. Such processing was carried out by someone on the basis of data obtained from you.

According to statements made both by Lufthansa and by United States Customs and Border Protection, personal data about Lufthansa passengers, obtained from you (or on your behalf from your agents or contractors, possibly including Amadeus and/or other CRS's), is used by United States Customs and Border Protection for making automated decisions.

It would be a violation of the German Data Protection Act and the EU Data Protection Directive for you to provide personal data to any third party, to be used for such automated decision-making, without being able to provide, on request, a complete explanation of the decision-making logic.

Accordingly, I reiterate my demand for a complete explanation of the logic used in making such decisions, regardless of whether they are made by you, by your agents or contractors, or by US or other government agencies or other third parties on the basis of data obtained from you.

> If it is acceptable for you and if we could use encrypted mailing via
> PGP, we would like to send our material via email. Please give us your
> consent to this. Otherwise we send a letter via DHL.

Thank you. I consent to your sending a copy by e-mail, unencrypted. I understand that this is not secure, but I intend to publish these documents anyway. E-mail is never entirely reliable. Since you say that you did not receive my message of 5 May 2010 until 27 May 2010, I assume that you received only the copy sent by the US Postal Service, and not the copy sent by e-mail. And I did not receive the earlier e-mail message which you say you sent on 27 May 2010, and which you copied with your latest e-mail. For these reasons, I respectfully request that you send a hardcopy as well as an e-mail copy of the information I have requested.

Thank you for your message. I look forward to receiving my data.

I apologize for writing to you in English, but I know no German, and my contract with Lufthansa was entered into entirely in English. If you have any questions, or if anything in this message is not clear, please feel free to call me in San Francisco at +1-415-824-0214.

Sincerely,

Edward Hasbrouck

Deutsche Lufthansa Aktiengesellschaft
Lufthansa Aviation Center, Airportring, 60546 Frankfurt/Main

Ihre Zeichen
Your Ref.

Unsere Zeichen / Datum
Our Ref. / Date

Telefon / Telefax
Telephone / Telefax

Mr.
Edward Hasbrouck
1130 Treat Avenue

BKL
05.07.2010

+49 69
696-5620

San Francisco
CA 94110 USA

Request for access to the personal data processed by or on behalf of your company

Dear Mr. Hasbrouck,

Thank you for your e-Mail dated June 15th. We are sorry to hear that you accuse Lufthansa of violating data protection laws without even having received the full answer to your access request. Lufthansa is not violating data protection laws as you hopefully may learn from the following.

Since we expect you to publish this letter in your blog again, we like to clarify your role in the travel industry. We are fully aware of the fact that you are not just a traveller but rather a travel expert and you have published many books on international travel and excessive commentaries about PNR, GDS-Systems and API. In your own words you are "a paid affiliate and outside sales agent" of the sales agency Airtreks.com in 7 Spring Street, San Francisco, CA 94104 USA. In this role you are registered in the Lufthansa "expert program". Attached you find the printout of your files in our expert system database (attachment 1).

In regard to your request, we certainly fulfil our legal obligations, we inform you about the personal data we stored and processed concerning your flights.

LH 455, 05 April 2010,
LH 4576, 06 April 2010,
LH 6911, 23 April 2010,
LH 418, 23 April 2010,
LH 9368, 23 April 2010,

The recipients or categories of recipients to which the data has been transferred and the purpose of storage of that data.

Gesellschaftsrechtliche Angaben, Anschrift
und weitere Informationen auf der Rückseite.
For corporate details, address and further
information please turn over.

We could not retrieve any further personal data related to you.

An extended right of information according to section 6a of the "Bundesdatenschutzgesetz" (German Federal Data Protection Act, hereinafter "FDPA") is not applicable, as the processing of passenger data by Lufthansa does not involve automated individual decision making in the sense of the FDPA. Please see the later description of data transfer to DHS.

Apart from the FDPA there are – as you may very well know - other legal instruments governing the collection, processing and storage of personal data of travellers in Global Distribution Systems (GDS) and about the transfer of this data (PNR-data sets) to the United States Department of Homeland Security (DHS).

GDS are regulated by **PE-CO_S 3675/08** REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on a Code of Conduct for computerised reservation systems and repealing Council Regulation (EEC) No 2299/89 (the Code of Conduct, hereinafter "CoC"). This EU-regulation supersedes any German law that could be applied concerning these matters and also regulates all CDS which offer services in Europe and is therefore valid also for all US-based GDS. It might be of interest for you to exercise your rights derived from the CoC against those GDS based in USA. The current version of the CoC assigns the controllership of PNR's generated by travel agencies to the respective system vendor, in our case Amadeus. Therefore, as already mentioned, you have to address your requests about all data stored in the Amadeus system, also about the log-files generated during the processing of this data to Amadeus or other GDS.

We only have access to the Amadeus system with the RT or RTH transaction to retrieve your PNR or PNR-History. No more information is available to us because we are not the controller of this data.

Of course we have controllership of personal data generated in the further ticketing, accounting and transportation processes, which use the data derived from the original PNR data sets provided by the GDS.

We get copies of PNR's from Amadeus 24 hours before departure of a Lufthansa flight for the purpose of running our departure control system. Later changes to a PNR are sent real time to our systems. For these data processing systems we are a controller according to German law and provide access to your check-in records (attachment 2).

When your travel agency created your PNR and sold the ticket to you, they also generated electronic tickets via Amadeus, which were transferred to and stored in our ETIX-Database. We also attach these ETIX-records (attachment 3).

As you certainly know the US-based provider ARC (more information about this company: <http://www.arccorp.com/aboutus/board-of-directors.jsp>) is involved to handle the financial transactions for airline ticket sales. They are neither subject to FDPA nor the CoC, but they subscribed to Safe Harbour. They are a kind of clearing house collecting ticket turnover from the travel agencies and distributing it to the ticket issuing airlines operating in the USA. We received sales data concerning your flights from ARC and stored them in the Lufthansa Revenue Services Database (SIRAX) (see attachment 4). Lufthansa Revenue Services GmbH is based in Germany, fully owned by Lufthansa and contracted by us to perform revenue accounting services.

The sales data is later matched with departure data, because LH profit is only generated if a sold ticket is flown. You find this information also in the SIRAX-files attached. They have to be stored according to German accounting rules for a storage period of 10 years.

Credit card data is separately sent to our credit card accounting department and their database (BEACH). Here we also attach the information we have (attachment 5). This data has also to be stored for 10 years to comply with accounting rules.

No travel agency in the United States neither Airtrade International (Vayama.com) nor your own company represent themselves as Lufthansa agencies. They are both IATA agencies that have no direct relation (except for marketing purposes like our expert program) and do not process data for us. Lufthansa is not responsible in any way for the handling of customer data by these agencies in U.S.A. This is also not affected by FDPA or CoC regulations.

The transfer of PNR-Data to the Department of Homeland Security (DHS) is governed by the following German law:

„Gesetz zu dem Abkommen vom 26. Juli 2007 zwischen der Europäischen Union und den Vereinigten Staaten von Amerika über die Verarbeitung von Fluggastdatensätzen (Passenger Name Records – PNR) und deren Übermittlung durch die Fluggesellschaften an das United States Department of Homeland Security (DHS) (PNR-Abkommen 2007)“.

We attach the German text of this act together with some English translation (attachment 6). This act allows Amadeus to “push” selected fields of PNR-data sets of relevant flights to DHS. This procedure is carried out between the GDS and DHS and can neither be controlled by us, nor do we receive any messages regarding these data transfers or the results of any potential processing of that data.

Finally we have to look at the **Advanced Passenger Information (API) data** transfer to DHS. Lufthansa collects the passport data in the machine readable part of the passport mostly during the check-in process (passport number, name, given name, gender, date of birth) as processor on behalf of DHS

respectively CBP. Some passengers have already given that data in advance to the travel agency or to an online booking platform. Then it is stored with the PNR. In this case we receive the API data from Amadeus. We transfer the API data real time technically via DHS to CBP during the passenger's check-in and receive an immediate response if the passenger can be boarded or not. In Lufthansa departure control system the API data is deleted the night after departure of the flight. Therefore your API data is already deleted.

As far as external parties, e.g. ground handling agents, are involved in fulfilling our transportation contracts, those contracted parties have access to passenger data in our own systems and in most cases even use the technical infrastructure provided by ourselves.

In case you are not satisfied with our response, you may address your complaint to our data protection authority which is „Der Landesbeauftragte für Datenschutz und Informationsfreiheit Nordrhein-Westfalen“.

Kind regards

Lufthansa German Airlines



Dr. Barbara Kirchberg-Lennartz
Data Protection Officer

Attachment 1 – Lufthansa expert program

Surname: Hasbrouck

Name: Edward

Email format: HTML/TXT

Email: edward@hasbrouck.org

Email Status: OK

IATA Number: 5626515

Agent Location Code: SPH Area: NYC EA SPH Country: NYC GPL SPH

Region: SFO GP SPH Territory: SFO GG SPH District: SFO AP52

Street + No. / District: 7 SPRING ST

City: SAN FRANCISCO

State: CA

Postal code: 94104

Country Code Tel: +1 Area code tel: 415 Phone: 8240214

Pin code: US175735

Title: Travel consultant

Main area of responsibility: Leisure travel

Agency name: AIRTREKS.COM

Country: USA

Terms and conditions: Yes

Birthday: 11/01/1960

Gender: Male

Password: *****

Agency Customer ID: 900923521397 - AIRTREKS.COM

Person Customer ID: 300001498499

Date last update: 2010-03-23 19:26:56

User: Insert date: 23/03/2010

Checkin Daten:

CO_PAX_CKI_ID	CO_SEG_ID	OPER_CO_SEG_ID	TIX_AIRL_NUM	TIX_DOC_NUM
201004050099651	22360513	22360513	220	7862793403
201004060088671	25241064	25241064	220	7862793403
201004230048834	25905908	25905908	220	7862793403
201004230048835	25845806	25845806	220	7862793404

Checkin History

CO_PAX_CKI_ID	CKI_HIST_TMS	CKI_HIST_SEQ_NUM	CKI_HIST_ACT_CD	CKI_EXT_HIST_ACT_CD
201004050099651	04.04.2010 22:45	1	UPD	
201004050099651	05.04.2010 19:26	1	INP	
201004050099651	05.04.2010 19:26	2		INP
201004050099651	05.04.2010 19:26	3	INP	
201004050099651	05.04.2010 19:26	1	ACC	
201004050099651	05.04.2010 19:26	2	TAG	
201004050099651	05.04.2010 20:56	1	BRD	
201004050099651	05.04.2010 20:56	2		BRD
201004050099651	05.04.2010 20:56	1	ABT	
201004060088671	05.04.2010 11:10	1	UPD	
201004060088671	05.04.2010 19:26	1	ACC	
201004060088671	05.04.2010 19:26	2	TAG	
201004060088671	06.04.2010 10:39	1	BRD	
201004060088671	06.04.2010 10:39	2		BRD
201004060088671	06.04.2010 10:39	1	ABT	
201004140280653	14.04.2010 11:09	1	INP	
201004140280653	14.04.2010 11:09	2		INP
201004140280653	14.04.2010 11:09	3	ACC	
201004140280653	14.04.2010 11:09	4	TAG	
201004140280653	14.04.2010 11:09	1	MOD	
201004140280653	14.04.2010 11:09	2		MOD
201004140280653	14.04.2010 11:09	3		MOD
201004140280653	14.04.2010 11:09	4		
201004140280653	14.04.2010 11:09	1	PTR	
201004140280653	14.04.2010 13:28	1	BRD	
201004230048834	22.04.2010 10:16	1	UPD	
201004230048834	22.04.2010 15:17	1	ACC	
201004230048834	23.04.2010 09:21	1	BRD	
201004230048835		1		
201004230048835	22.04.2010 06:41	1	ASR	
201004230048835	22.04.2010 06:42	1	UPD	
201004230048835	23.04.2010 09:04	1	INP	
201004230048835	23.04.2010 09:04	2		INP
201004230048835	23.04.2010 09:04	3	INP	
201004230048835	23.04.2010 09:04	4	ACC	
201004230048835	23.04.2010 09:27	1	MOD	
201004230048835	23.04.2010 09:27	2		MOD
201004230048835	23.04.2010 09:27	3	TAG	
201004230048835	23.04.2010 10:47	1	ABT	
201004230048835	23.04.2010 10:47	1	BRD	
201004230048835	23.04.2010 10:47	2		BRD
201004230048835	23.04.2010 10:47	1	ABT	

Seat Information

CO_LEG_ID	CO_PAX_CKI_ID	SEAT_ROW_NUM	SEAT_POS_CD	FLWN_COMP_CD
1053817679	201004140280653	6	A	M
6440179	201004230048835	46	K	M
5735196	201004060088671	19	A	M
5468706	201004050099651	42	E	M

TIX_COUP_NUM	PNR_LH_RL	CUST_PRG_STAT_CD	CUST_ALIAS_ID	CUST_ALIAS_TYP_CD
1	Y55IZ2			
2	Y55IZ2			
4	Y55IZ2			
1	Y55IZ2			

CKI_MODE_CD	CONSOLE_TYP_CD	CONSOLE_LOC_CD	CONSOLE_PID_NUM	CHGE_EDT_IND
			11732	N
	PIX		96018	N
	PIX		96018	N
	PIX		96018	N
	PIX		96018	N
	BDC		88865	N
			88865	N
			11732	N
TCI	PIX		96018	N
	PIX		96018	N
	BDC		80808	N
			80808	N
	FCG		139275	N
	FCG		139275	N
	FCG		139275	N
	FCG		139275	N
	FCG		139275	N
	FCG		139276	N
	FCG	GTE	36964	N
			11732	N
	PIX	GTE	7510	N
		GTE	47807	N
			10320	N
			11732	N
	QCK		18022	N
	QCK		18022	N
	QCK		18022	N
	PIX		93952	N
	PIX		93952	N
			80845	N
	BDC		80845	N
			80845	N

FLWN_BKG_CLS	EXT_SEAT_REQ_IN	SEAT_NOT_REQ_IND	CO_UPD_TMS
E	N	N	15.04.2010 03:34
S	N	N	24.04.2010 01:33
L	N	N	07.04.2010 02:57
L	N	N	06.04.2010 02:15

CUST_ALIAS_CHGE_IND	LAST_NM	FIRST_NM	GRP_IND	CKI_PTY_ID
N	HASBROUCK	EDWARD J MR	N	
N	HASBROUCK	EDWARD J MR	N	
N	HASBROUCK	EDWARD J MR	N	
N	HASBROUCK	EDWARD J MR	N	

CHGE_EDT_AIRL_CD	CKI_EXT_HIST_ITEM_CD	CKI_EXT_HIST_TXT	CKI_TRANSACTION_CD	CO_UPD_TMS
			FOID	06.04.2010 02:14
			NDOC	06.04.2010 02:14
	PSPT	LPA		06.04.2010 02:14
			KAQQ	06.04.2010 02:14
			NPA	06.04.2010 02:14
			NPT	06.04.2010 02:14
			KCAT	06.04.2010 02:14
	BOP	BCD		06.04.2010 02:14
			KCAT	06.04.2010 02:14
			FOID	07.04.2010 02:57
			NPA	07.04.2010 02:57
			NPT	07.04.2010 02:57
			KCAT	07.04.2010 02:57
	BOP	BCD		07.04.2010 02:57
			KCAT	07.04.2010 02:57
			NDOC	15.04.2010 03:34
	PSPT	10396BD		15.04.2010 03:34
			NPA	15.04.2010 03:34
			NPT	15.04.2010 03:34
			NPU	15.04.2010 03:34
	SNR			15.04.2010 03:34
	XBP			15.04.2010 03:34
			NBP	15.04.2010 03:34
			Z03	15.04.2010 03:34
			NBI	15.04.2010 03:34
			FOID	24.04.2010 01:33
			NPA	24.04.2010 01:33
			NBI	24.04.2010 01:33
	OSR			24.04.2010 01:33
			KPQ	24.04.2010 01:33
			FOID	24.04.2010 01:33
			NDOC	24.04.2010 01:33
	PSPT	LPA		24.04.2010 01:33
			KAQQ	24.04.2010 01:33
			NPA	24.04.2010 01:33
			NPU	24.04.2010 01:33
	BAGL			24.04.2010 01:33
			NPT	24.04.2010 01:33
			KCAT	24.04.2010 01:33
			KCAT	24.04.2010 01:33
	BOP	QBD		24.04.2010 01:33
			KCAT	24.04.2010 01:33

CKI_SURNM_PTY_ID	CKI_SURNM_PTY_PAX_NUM	RES_PTY_CONN_CD	RES_PTY_PAX_NUM	SURNM_IS_GRP_IND	SURNM_AMT
129		1		N	1
22		1		N	1
15		1		N	1
157		1		N	1

BOARD_PAX_IND	BOARD_NUM	OUTB_CO_SEG_ID	OUTB_BOARDG_PAS_IND	PAD_IND	ID_PAX_CD	UPG_IND	DNGRD_IND
Y	273	25241064	Y	N	NO	N	N
Y	11	-1100638		N	NO	N	N
Y	12	25845806	N	N	NO	N	N
Y	278	39782459	N	N	NO	N	N

MM_UPG_IND	PAX_MSG_IND	SBY_PAX_IND	SBY_ACC_PAX_IND	SBY_REASON_CD	SBY_INT_NUM	PAX_ACC_IND
N		N	N			Y
N		N	N			Y
N		N	N			Y
N		N	N			Y

PAX_DEL_IND	WTLST_PAX_IND	DEBOARD_IND	VDB_IND	SHORT_CANCEL_IND	PAX_NO_RES_IND	PAX_NO_REC_IND
N	N	N	N	N	N	N
N	N	N	N	N	N	N
N	N	N	N	N	N	N
N	N	N	N	N	N	N

LH_ID_BAG_TREAT_CD	BOARD_ZONE_CD	MIS_CONN_PAX_IND	EQUIP_CHGE_RESEAT_IND	EQUIP_CHGE_OVLD_IND
N		4 N	N	N
N		1 N	N	N
N		0 N	N	N
N		2 N	N	N

RTN_FLT_CKI_IND	INB_EDT_THRCKI_IND	OUTB_EDT_THRCKI_IND	MKT_AIRL_PAX_IND	EDI_ONCARRIAGE_IND
N	N	N	N	N
N	N	N	N	N
N	N	N	N	N
N	N	N	N	N

EDI_ERR_IND	CKI_RESVD_SEAT_IND	RES_RESVD_SEAT_IND	TOT_RESVD_SEAT_AMT	SEAT_CHGE_IND
N	N	Y	1	N
N	N	Y	1	N
N	N	N	0	N
N	N	Y	1	N

RES_RESVD_SEAT_DENI_IND	ETIX_PROC_CD	INIT_PAX_RETR_TYP_CD	LAST_PAX_RETR_TYP_CD	TIX_FROM_RES_IND
N	T			N
N	T			N
N	T			N
N	T		1	N

ATB_TIX_IND	BAG_CKI_AMT	BAG_LOCCKI_AMT	BAG_THRCKI_AMT	BAG_OFFL_IND	TEL_CKI_IND	THRCKI_IND	MSG_TXT
U	0	1	0	N	N	N	
U	0	0	1	N	N	Y	
U	0	0	0	N	N	N	
U	0	1	0	N	N	N	

FIRST_CLS_ICNT_IND	TIX_BKG_CLS_CD	PAX_TRIP_ID	TRIP_SEG_NUM	FLWN_BKG_CLS_CD	INF_IND	UNAC_MINOR_IND
N		YKQQYC	1	L	N	N
N		YKQQYC	2	L	N	N
N		63HXCS	1	S	N	N
N		63HXCS	2	S	N	N

EXT_SEAT_REQ_IND	STRETCH_IND	BASSINET_IND	JPSEAT_IND	INB_CO_SEG_ID	INB_CLS_CD	OUTB_CLS_CD
N	N	N	N	-1100598		L
N	N	N	N	22360513	L	
N	N	N	N	-1100667		S
N	N	N	N	25905908	S	

SRV_MAN_ADDED_IND	AIRPL_IND	CO_UPD_TMS	AIRL_CD	FLT_NUM	FLT_SUFF_CD	SCHED_DEP_DT
N	N	06.04.2010 02:12	LH	455		05.04.2010
N	N	07.04.2010 02:56	LH	4576		06.04.2010
N	N	24.04.2010 01:31	LH	6911		23.04.2010
N	N	24.04.2010 01:31	LH	418		23.04.2010

ORIG_AIRPT_CD	DEST_AIRPT_CD	CKI_MODE_CD	CKI_LOC_CD	QCK_IND	QCK_ACC_IND	FLWN_COMP_CD	CKI_MODE_01_CD
SFO	FRA	LOC	CCI	N	N	M	LOC
FRA	BRU	T_L	CCI	N	N	M	TCI
XER	FRA	LOC	GTE	N	N	?	LOC
FRA	IAD	LOC	CCI	Y	Y	M	LOC

QCK_POTENTIAL_IND	KATZE	AK_4_RULE	PNR_CRC	WAIST	LAST_NM_SECURE	FIRST_NM_SECURE
Y	338293020100948000	0	0	0	HASBROUCK	EDWARD J MR
Y	338393025104738000	0	0	0	HASBROUCK	EDWARD J MR
Y	340093012505083000	0	0	0	HASBROUCK	EDWARD J MR
Y	340093012500847000	0	0	0	HASBROUCK	EDWARD J MR

PCR_KEY	FLWN_PAX_IND
JML7E	Y
JML7E	Y
VF365	Y
VF365	Y

Attachment 3 – ETIX-Database

_NRT CC/2207862793403,ACHV

HASBROUCK/EDWARD J MR *** ETIX ARCHIVE / 08JUN10 12:43 ***

-- 220 7862793403 - 04 - HASBROUCK/EDWARD J MR --

1. LH 455 L 05APR SFOFRA 14.15 05APR/05APR *T-BRD* LH 0455 L 05APR SFOFRA
2. LH 4576 L 06APR FRABRU 13.00 06APR/05APR *T-BRD* LH 4576 L 06APR FRABRU
3. LH 6911 S 23APR XERFRA 08.15 23APR/05APR *T-BRD* LH 6911 S 23APR XERFRA
4. LH 418 S 23APR FRAIAD 13.10 23APR/05APR *T-BRD* LH 0418 S 23APR FRAIAD
5. LH 9368 S 23APR IADSFO 17.35 23APR/05APR *TRANS* UA 0975 S 23APR IADSFO

Attachment 4 - LH Revenue Services Database (SIRAX)

surname	firstName	pnrRecordLocator	pnrCreationDate	boardpointCity	offpointCityCode
HASBROUCK	EDWARD J MR	Y55IZ2	23.03.2010	FRA	BRU
HASBROUCK	EDWARD J MR	Y55IZ2	23.03.2010	FRA	BRU
HASBROUCK	EDWARD J MR	Y55IZ2	23.03.2010	FRA	IAD
HASBROUCK	EDWARD J MR	Y55IZ2	23.03.2010	FRA	IAD
HASBROUCK	EDWARD J MR	Y55IZ2	23.03.2010	IAD	SFO
HASBROUCK	EDWARD J MR	Y55IZ2	23.03.2010	IAD	SFO
HASBROUCK	EDWARD J MR	Y55IZ2	23.03.2010	SFO	FRA
HASBROUCK	EDWARD J MR	Y55IZ2	23.03.2010	SFO	FRA
HASBROUCK	EDWARD J MR	Y55IZ2	23.03.2010	XER	FRA
HASBROUCK	EDWARD J MR	Y55IZ2	23.03.2010	XER	FRA

depDate	identification	productFlightNumber	ticketAirlineNumber	ticketDocumentNumber
06.04.2010	LH	4576	220	7862793403
06.04.2010	LH	4576	220	7862793404
23.04.2010	LH	418	220	7862793403
23.04.2010	LH	418	220	7862793404
23.04.2010	LH	9368	220	7862793403
23.04.2010	LH	9368	220	7862793404
05.04.2010	LH	455	220	7862793403
05.04.2010	LH	455	220	7862793404
23.04.2010	LH	6911	220	7862793403
23.04.2010	LH	6911	220	7862793404

Attachment 5 – credit card data

DATL	Ticketnummer	GC	AID	DC	EP Betrag	Whr	Verkaufsdt	IATA-Nr	Passagiername	Routing	Flugdatum
ARC	2207862793403	MC	546604*****7172	DB	1.111,91	USD	24.03.2010	49518302US	HASBROUCK/EDWARD J	SFO-FRA-BRU-XER-FRA	05.04.2010

Gesetz
zu dem Abkommen vom 26. Juli 2007
zwischen der Europäischen Union und den Vereinigten Staaten von Amerika
über die Verarbeitung von Fluggastdatensätzen (Passenger Name Records – PNR)
und deren Übermittlung durch die Fluggesellschaften
an das United States Department of Homeland Security (DHS)
(PNR-Abkommen 2007)

Vom 20. Dezember 2007

Der Bundestag hat das folgende Gesetz beschlossen:

Artikel 1

Dem in Brüssel und Washington am 23. und 26. Juli 2007 unterzeichneten Abkommen zwischen der Europäischen Union und den Vereinigten Staaten von Amerika über die Verarbeitung von Fluggastdatensätzen (Passenger Name Records – PNR) und deren Übermittlung durch die Fluggesellschaften an das United States Department of Homeland Security (DHS) und dem begleitenden Briefwechsel zwischen der Europäischen Union und den Vereinigten Staaten von Amerika wird zugestimmt. Das Abkommen und der begleitende Briefwechsel werden nachstehend veröffentlicht.

Artikel 2

- (1) Dieses Gesetz tritt am Tage nach seiner Verkündung in Kraft.
- (2) Der Tag, an dem das Abkommen nach seinem Artikel 9 Satz 1 in Kraft tritt, ist im Bundesgesetzblatt bekannt zu geben.

Die verfassungsmäßigen Rechte des Bundesrates sind gewahrt.

Das vorstehende Gesetz wird hiermit ausgefertigt. Es ist im Bundesgesetzblatt zu verkünden.

Berlin, den 20. Dezember 2007

Der Bundespräsident
Horst Köhler

Die Bundeskanzlerin
Dr. Angela Merkel

Der Bundesminister des Innern
Schäuble

Der Bundesminister des Auswärtigen
Steinmeier

Die Bundesministerin der Justiz
Brigitte Zypries

Abkommen
zwischen der Europäischen Union und den Vereinigten Staaten von Amerika
über die Verarbeitung von Fluggastdatensätzen (Passenger Name Records – PNR)
und deren Übermittlung durch die Fluggesellschaften
an das United States Department of Homeland Security (DHS)
(PNR-Abkommen 2007)*)

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)

Die Europäische Union

und

die Vereinigten Staaten von Amerika –

in dem Bestreben, als Mittel zum Schutz ihrer jeweiligen demokratischen Gesellschaft und ihrer gemeinsamen Werte Terrorismus und grenzüberschreitende Kriminalität wirksam zu verhüten und zu bekämpfen;

in dem Bewusstsein, dass der Austausch von Informationen ein wesentlicher Faktor bei der Bekämpfung des Terrorismus und der grenzüberschreitenden Kriminalität ist und dass die Nutzung von PNR-Daten in diesem Zusammenhang ein wichtiges Instrument darstellt;

in dem Bewusstsein, dass zum Schutz der öffentlichen Sicherheit und für Strafverfolgungszwecke Vorschriften für die Übermittlung von PNR-Daten durch die Fluggesellschaften an das DHS festgelegt werden sollten;

in Anerkennung der Bedeutung der Verhütung und Bekämpfung des Terrorismus und damit zusammenhängender Straftaten sowie sonstiger schwerer Straftaten grenzüberschreitender Art, einschließlich der organisierten Kriminalität, bei gleichzeitiger Achtung der Grundrechte und -freiheiten, insbesondere des Schutzes der Privatsphäre;

in der Erkenntnis, dass die Rechtsvorschriften und die Politik der Vereinigten Staaten und Europas zum Schutz der Privatsphäre auf einer gemeinsamen Grundlage beruhen und Unterschiede bei der Umsetzung dieser Grundsätze die Zusammenarbeit zwischen den Vereinigten Staaten und der Europäischen Union (EU) nicht behindern sollten;

unter Berücksichtigung internationaler Übereinkommen, der Gesetze und Vorschriften der USA, nach denen jede Fluggesellschaft, die Auslands-Passagierflüge in die oder aus den Vereinigten Staaten durchführt, verpflichtet ist, dem DHS PNR-Daten

The European Union

and

the United States of America:

desiring to prevent and combat terrorism and transnational crime effectively as a means of protecting their respective democratic societies and common values;

recognising that information sharing is an essential component in the fight against terrorism and transnational crime and that in this context the use of PNR data is an important tool;

recognising that, in order to safeguard public security and for law enforcement purposes, rules should be laid down on the transfer of PNR data by air carriers to DHS;

recognising the importance of preventing and combating terrorism and related crimes, and other serious crimes that are transnational in nature, including organised crime, while respecting fundamental rights and freedoms, notably privacy;

recognising that U.S. and European privacy law and policy share a common basis and that any differences in the implementation of these principles should not present an obstacle to cooperation between the U.S. and the European Union (EU);

having regard to international conventions, U.S. statutes, and regulations requiring each air carrier operating passenger flights in foreign air transportation to or from the United States to make PNR data available to DHS to the extent they are collected and

*) ABl. EU 2007 Nr. L 204 S. 18–25

zur Verfügung zu stellen, soweit solche Daten erhoben und in den computergestützten Buchungs- bzw. Abfertigungskontrollsystemen (nachstehend „Buchungssysteme“ genannt) gespeichert werden, sowie vergleichbarer Vorschriften, die in der EU angewandt werden;

unter Berücksichtigung des Artikels 6 Absatz 2 des Vertrags über die Europäische Union über die Achtung der Grundrechte, insbesondere des sich daraus ableitenden Rechts auf Schutz personenbezogener Daten;

unter Verweis auf die früheren Abkommen über PNR-Daten zwischen der Europäischen Gemeinschaft und den Vereinigten Staaten von Amerika vom 28. Mai 2004 und zwischen der Europäischen Union und den Vereinigten Staaten von Amerika vom 19. Oktober 2006;

unter Berücksichtigung der einschlägigen Bestimmungen des Aviation Transportation Security Act von 2001, des Homeland Security Act von 2002, des Intelligence Reform and Terrorism Prevention Act von 2004 und des Executive Order 13388 über die Zusammenarbeit zwischen Regierungsstellen der Vereinigten Staaten bei der Terrorismusbekämpfung sowie des Privacy Act von 1974, des Freedom of Information Act und des E-Government Act von 2002;

unter Hinweis darauf, dass die Europäische Union sicherstellen sollte, dass die Fluggesellschaften, deren Buchungssysteme innerhalb der Europäischen Union betrieben werden, dem DHS PNR-Daten zur Verfügung stellen und die vom DHS im Einzelnen festgelegten technischen Anforderungen für diese Übermittlung einhalten;

unter Bekräftigung, dass dieses Abkommen keinen Präzedenzfall im Hinblick auf weitere Beratungen oder Verhandlungen zwischen den Vereinigten Staaten und der Europäischen Union oder zwischen einer der beiden Vertragsparteien und einem Staat über die Verarbeitung und Übermittlung von PNR-Daten oder Daten anderer Art darstellt;

in dem Bestreben, die Zusammenarbeit zwischen den Vertragsparteien im Geiste einer transatlantischen Partnerschaft zu verstärken und zu stimulieren –

sind wie folgt übereingekommen:

(1) Auf der Grundlage der Zusicherungen in dem Schreiben des DHS, in dem das DHS seine Verfahrensweise beim Schutz von PNR-Daten erläutert (nachstehend „DHS-Schreiben“ genannt), stellt die Europäische Union sicher, dass Fluggesellschaften, die Auslands-Passagierflüge in die oder aus den Vereinigten Staaten von Amerika durchführen, in ihren Buchungssystemen enthaltene PNR-Daten nach den Vorgaben des DHS zur Verfügung stellen.

(2) Das DHS wird für die Übermittlung von Daten durch diese Fluggesellschaften spätestens bis zum 1. Januar 2008 unmittelbar zu einem Push-System bei sämtlichen Fluggesellschaften übergehen, die ein den technischen Anforderungen des DHS entsprechendes System eingerichtet haben. Für die Fluggesellschaften, die kein derartiges System einrichten, bleibt das bisherige System so lange in Kraft, bis sie ein System eingerichtet haben, das den technischen Anforderungen des DHS entspricht. Dementsprechend wird das DHS elektronischen Zugriff auf PNR-Daten aus den von den Fluggesellschaften im Hoheitsgebiet der Mitgliedstaaten der Europäischen Union betriebenen Buchungssystemen erhalten, bis ein zufrieden stellendes System für die Übermittlung solcher Daten durch die Fluggesellschaften vorhanden ist.

(3) Das DHS verarbeitet die übermittelten PNR-Daten und behandelt die von dieser Verarbeitung betroffenen Personen gemäß den geltenden Gesetzen und verfassungsrechtlichen Erfordernissen der Vereinigten Staaten und ohne unrechtmäßige Diskriminierung insbesondere aufgrund der Staatsangehörigkeit oder des Wohnsitzlandes der Betroffenen. In dem DHS-Schreiben werden diese und andere Schutzmaßnahmen dargelegt.

contained in the air carrier's automated reservation/departure control systems (hereinafter "reservation systems"), and comparable requirements implemented in the EU;

having regard to Article 6 paragraph 2 of the Treaty on European Union on respect for fundamental rights, and in particular to the related right to the protection of personal data;

noting the former agreements regarding PNR between the European Community and the United States of America of 28 May 2004 and between the European Union and the United States of America of 19 October 2006;

having regard to relevant provisions of the Aviation Transportation Security Act of 2001, the Homeland Security Act of 2002, the Intelligence Reform and Terrorism Prevention Act of 2004 and Executive Order 13388 regarding cooperation between agencies of the United States government in combating terrorism, as well as the Privacy Act of 1974, Freedom of Information Act and the E-Government Act of 2002;

noting that the European Union should ensure that air carriers with reservation systems located within the European Union make available PNR data to DHS and comply with the technical requirements for such transfers as detailed by DHS;

affirming that this Agreement does not constitute a precedent for any future discussions or negotiations between the United States and the European Union, or between either of the Parties and any State regarding the processing and transfer of PNR or any other form of data;

seeking to enhance and encourage cooperation between the parties in the spirit of transatlantic partnership;

have agreed as follows:

(1) On the basis of the assurances in DHS's letter explaining its safeguarding of PNR (the DHS letter), the European Union will ensure that air carriers operating passenger flights in foreign air transportation to or from the United States of America will make available PNR data contained in their reservation systems as required by DHS.

(2) DHS will immediately transition to a push system for the transmission of data by such air carriers no later than January 1, 2008 for all such air carriers that have implemented such a system that complies with DHS's technical requirements. For those air carriers that do not implement such a system, the current systems shall remain in effect until the carriers have implemented a system that complies with DHS's technical requirements. Accordingly, DHS will electronically access the PNR from air carriers' reservation systems located within the territory of the Member States of the European Union until there is a satisfactory system in place allowing for the transmission of such data by the air carriers.

(3) DHS shall process PNR data received and treat data subjects concerned by such processing in accordance with applicable U.S. laws, constitutional requirements, and without unlawful discrimination, in particular on the basis of nationality and country of residence. DHS's letter sets forth these and other safeguards.

(4) Das DHS und die EU werden die Durchführung dieses Abkommens, das DHS-Schreiben und die PNR-Regelungen und -Verfahren der Vereinigten Staaten und der EU regelmäßig überprüfen, um gegenseitig sicherzustellen, dass ihre Systeme ordnungsgemäß funktionieren und den Schutz der Privatsphäre tatsächlich gewährleisten.

(5) Das DHS erwartet, dass im Rahmen dieses Abkommens nicht von ihm verlangt wird, Datenschutzmaßnahmen in seinem PNR-System zu ergreifen, die strenger sind als diejenigen, die europäische Behörden in ihren innerstaatlichen PNR-Systemen anwenden. Das DHS verlangt von europäischen Behörden nicht, in ihren PNR-Systemen Datenschutzmaßnahmen zu ergreifen, die strenger sind als diejenigen, die die Vereinigten Staaten in ihrem PNR-System anwenden. Werden die Erwartungen des DHS nicht erfüllt, so behält es sich vor, die einschlägigen Regelungen des DHS-Schreibens auszusetzen und gleichzeitig Konsultationen mit der EU zu führen, um eine schnelle und zufriedenstellende Lösung herbeizuführen. Wird in der Europäischen Union oder in einem oder mehreren ihrer Mitgliedstaaten ein PNR-System eingeführt, das die Fluggesellschaften verpflichtet, den Behörden PNR-Daten von Personen zur Verfügung zu stellen, deren Reiseweg einen Flug in die oder aus der Europäischen Union einschließt, so fördert das DHS streng nach dem Gegenseitigkeitsprinzip aktiv die Zusammenarbeit der seiner Zuständigkeit unterliegenden Fluggesellschaften.

(6) In Bezug auf die Anwendung dieses Abkommens wird davon ausgegangen, dass das DHS einen angemessenen Schutz der aus der Europäischen Union übermittelten PNR-Daten gewährleistet. Gleichzeitig wird sich die EU nicht aus Datenschutzwägungen in die Beziehungen zwischen den Vereinigten Staaten und Drittländern bezüglich des Austauschs von Informationen über Fluggäste einmischen.

(7) Die Vereinigten Staaten und die EU arbeiten mit den betroffenen Kreisen in der Luftverkehrsbranche zusammen, um Hinweise, in denen die PNR-Systeme (einschließlich Rechtsmittelverfahren und Erhebungspraxis) beschrieben werden, unter den Reisenden besser bekannt zu machen, und legen den Fluggesellschaften nahe, Bezugnahmen auf diese Hinweise und die Hinweise selbst in ihre förmlichen Beförderungsverträge aufzunehmen.

(8) Stellt die EU fest, dass die Vereinigten Staaten gegen dieses Abkommen verstoßen haben, so besteht der einzige Rechtsbehelf darin, dieses Abkommen zu kündigen und die in Nummer 6 dargelegte Annahme des angemessenen Schutzes zu widerrufen. Stellen die Vereinigten Staaten fest, dass die EU gegen dieses Abkommen verstoßen hat, so besteht der einzige Rechtsbehelf darin, dieses Abkommen zu kündigen und das DHS-Schreiben zu widerrufen.

(9) Dieses Abkommen tritt am ersten Tag des Monats in Kraft, der auf den Tag folgt, an dem die Vertragsparteien einander den Abschluss der einschlägigen internen Verfahren notifiziert haben. Dieses Abkommen gilt vorläufig ab dem Tag der Unterzeichnung. Dieses Abkommen kann von jeder Vertragspartei jederzeit durch Notifizierung auf diplomatischem Wege gekündigt oder ausgesetzt werden. Die Kündigung wird dreißig (30) Tage nach dem Tag, an dem sie der anderen Vertragspartei notifiziert wurde, wirksam, es sei denn, eine der Vertragsparteien hält im Interesse ihrer nationalen Sicherheit oder inneren Sicherheit eine kürzere Kündigungsfrist für unabdingbar. Dieses Abkommen und alle daraus abgeleiteten Verpflichtungen treten sieben Jahre nach dem Tag der Unterzeichnung außer Kraft bzw. verlieren ihre Gültigkeit, es sei denn, die Vertragsparteien vereinbaren gegenseitig, das Abkommen zu ersetzen.

Dieses Abkommen hat nicht den Zweck, Ausnahmen von den Gesetzen der Vereinigten Staaten von Amerika oder der Europäischen Union oder ihrer Mitgliedstaaten zu regeln oder diese zu ändern.

Durch dieses Abkommen werden keinerlei Rechte oder Vergünstigungen für andere Personen oder Einrichtungen privater oder öffentlicher Art begründet oder übertragen.

(4) DHS and the EU will periodically review the implementation of this Agreement, the DHS letter, and U.S. and EU PNR policies and practices with a view to mutually assuring the effective operation and privacy protection of their systems.

(5) By this Agreement, DHS expects that it is not being asked to undertake data protection measures in its PNR system that are more stringent than those applied by European authorities for their domestic PNR systems. DHS does not ask European authorities to adopt data protection measures in their PNR systems that are more stringent than those applied by the U.S. for its PNR system. If its expectation is not met, DHS reserves the right to suspend relevant provisions of the DHS letter while conducting consultations with the EU with a view to reaching a prompt and satisfactory resolution. In the event that a PNR system is implemented in the European Union or in one or more of its Member States that requires air carriers to make available to authorities PNR data for persons whose travel itinerary includes a flight to or from the European Union, DHS shall, strictly on the basis of reciprocity, actively promote the cooperation of the airlines within its jurisdiction.

(6) For the application of this Agreement, DHS is deemed to ensure an adequate level of protection for PNR data transferred from the European Union. Concomitantly, the EU will not interfere with relationships between the United States and third countries for the exchange of passenger information on data protection grounds.

(7) The U.S. and the EU will work with interested parties in the aviation industry to promote greater visibility for notices describing PNR systems (including redress and collection practices) to the travelling public and will encourage airlines to reference and incorporate these notices in the official contract of carriage.

(8) The exclusive remedy if the EU determines that the U.S. has breached this Agreement is the termination of this Agreement and the revocation of the adequacy determination referenced in paragraph (6). The exclusive remedy if the U.S. determines that the EU has breached this Agreement is the termination of this Agreement and the revocation of the DHS letter.

(9) This Agreement will enter into force on the first day of the month after the date on which the Parties have exchanged notifications indicating that they have completed their internal procedures for this purpose. This Agreement will apply provisionally as of the date of signature. Either Party may terminate or suspend this Agreement at any time by notification through diplomatic channels. Termination will take effect thirty (30) days from the date of notification thereof to the other Party unless either Party deems a shorter notice period essential for its national security or homeland security interests. This Agreement and any obligations thereunder will expire and cease to have effect seven years after the date of signature unless the Parties mutually agree to replace it.

This Agreement is not intended to derogate from or amend the laws of the United States of America or the European Union or its Member States.

This Agreement does not create or confer any right or benefit on any other person or entity, private or public.

Dieses Abkommen ist in zwei Urschriften in englischer Sprache abgefasst. Es wird ebenfalls in bulgarischer, dänischer, deutscher, estnischer, finnischer, französischer, griechischer, italienischer, lettischer, litauischer, maltesischer, niederländischer, polnischer, portugiesischer, rumänischer, schwedischer, slowakischer, slowenischer, spanischer, tschechischer und ungarischer Sprache abgefasst und die Vertragsparteien genehmigen diese Sprachfassungen. Nach ihrer Genehmigung ist der Wortlaut in diesen Sprachfassungen gleichermaßen verbindlich.)*

This Agreement shall be drawn up in duplicate in the English language. It shall also be drawn up in the Bulgarian, Czech, Danish, Dutch, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish, and Swedish languages, and the Parties shall approve these language versions. Once approved, the versions in these languages shall be equally authentic.

Geschehen zu Brüssel am 23. Juli 2007 und in Washington am 26. Juli 2007.

Done at Brussels 23 July 2007 and at Washington 26 July 2007

Für die Europäische Union
For the European Union

Luis Amado

Für die Vereinigten Staaten von Amerika
For the United States of America

Michael Chertoff

Schreiben der USA an die EU

Herrn Luis Amado
Präsident des Rates der Europäischen Union
175 Rue de la Loi
1048 Brüssel
Belgien

Um die Fragen der Europäischen Union zu beantworten und um zu unterstreichen, welche Bedeutung die Regierung der Vereinigten Staaten dem Schutz der Privatsphäre beimisst, soll in diesem Schreiben erläutert werden, wie das United States Department of Homeland Security (DHS) die Erhebung, die Nutzung und die Speicherung von Fluggastdatensätzen (Passenger Name Records – PNR) handhabt. Mit keiner der in diesem Schreiben genannten Regelungen werden andere Rechte oder Vergünstigungen für Personen oder Einrichtungen privater oder öffentlicher Art begründet oder übertragen oder andere Rechtsmittel eingeräumt als diejenigen, die in dem im Juli 2007 unterzeichneten Abkommen zwischen der EU und den USA über die Verarbeitung von PNR und deren Übermittlung durch die Fluggesellschaften an das DHS (nachstehend „Abkommen“ genannt) genannt sind. Vielmehr werden in diesem Schreiben die Zusicherungen und Regelungen dargelegt, die das DHS in Bezug auf die PNR-Daten abgibt bzw. anwendet, die gemäß den Rechtsvorschriften der USA im Rahmen des Flugverkehrs zwischen den USA und der Europäischen Union erhoben werden (nachstehend „EU-PNR“ genannt).

I. Verwendungszweck der PNR:

Das DHS verwendet die EU-PNR ausschließlich zum Zwecke der Verhütung und Bekämpfung (1) des Terrorismus und damit zusammenhängender Straftaten, (2) sonstiger schwerer Straftaten grenzüberschreitender Art, einschließlich der organisierten Kriminalität, sowie (3) der Flucht vor Haftbefehlen oder vor Gewahrsamnahme im Zusammenhang mit den genannten Straftaten. Soweit erforderlich, können die PNR zum Schutz lebenswichtiger Interessen der betroffenen Person oder anderer Personen oder im Zusammenhang mit Strafprozessen oder anderen gesetzlichen Erfordernissen verwendet werden. Das DHS wird die EU über die Verabschiedung aller US-Rechtsvorschriften informieren, die sich substanzial auf die in diesem Schreiben enthaltenen Erklärungen auswirken.

*) Die deutsche Sprachfassung ist noch nicht genehmigt.

U.S. Letter to EU

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

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

I. Purpose for which PNR is used:

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

II. Austausch von PNR:

Das DHS gibt EU-PNR-Daten nur für die in Abschnitt I genannten Zwecke weiter.

Das DHS behandelt EU-PNR-Daten gemäß dem US-Recht als sensibel und vertraulich und gibt PNR-Daten in eigenem Ermessen nur an andere US-Regierungsbehörden mit Aufgaben im Bereich der Strafverfolgung, der öffentlichen Sicherheit oder der Terrorismusbekämpfung weiter, um diese in mit der Terrorismusbekämpfung, der grenzüberschreitenden Kriminalität und der öffentlichen Sicherheit zusammenhängenden Fällen (zu denen unter anderem Bedrohungen, Flüge, Einzelpersonen und problematische Strecken gehören), die von ihnen geprüft oder untersucht werden, zu unterstützen; dies erfolgt gemäß dem geltenden Recht und in Übereinstimmung mit schriftlichen Vereinbarungen und den US-Rechtsvorschriften über den Austausch von Informationen zwischen US-Regierungsbehörden. Der Zugang wird streng und sorgfältig auf die vorstehend beschriebenen Fälle beschränkt und muss in einem angemessenen Verhältnis zur Art des jeweiligen Falles stehen.

EU-PNR-Daten werden nur dann mit Regierungsbehörden von Drittstaaten ausgetauscht, wenn zuvor die vom Empfänger beabsichtigte(n) Verwendung(en) und die Fähigkeit des Empfängers zum Schutz der Informationen geprüft wurden. Abgesehen von Notsituationen erfolgt jeder derartige Datenaustausch gemäß ausdrücklichen Vereinbarungen zwischen den Parteien, die Datenschutzmaßnahmen umfassen, die mit denen vergleichbar sind, die das DHS, wie in Absatz 2 dieses Abschnitts beschrieben, auf EU-PNR anwendet.

III. Arten der erhobenen Informationen:

Die meisten Einzelbestandteile von PNR-Daten kann das DHS bei der Überprüfung des Flugscheins und anderer Reisedokumente eines Fluggastes im Rahmen seiner normalen Grenzkontrollbefugnis erhalten, aber dadurch, dass das DHS diese Daten auf elektronischem Wege erhalten kann, ist es wesentlich besser in der Lage, seine Ressourcen auf Hochrisikobereiche zu konzentrieren und dadurch Bona-fide-Reisenden Erleichterungen zu gewähren und sie besser zu schützen.

Arten der erhobenen EU-PNR:

1. PNR-Buchungscode (Record Locator)
2. Datum der Reservierung/der Ausstellung des Flugscheins
3. Geplante Abflugdaten
4. Name(n)
5. Verfügbare Vielflieger- und Bonus-Daten (d. h. Gratisflugscheine, Upgrades usw.)
6. Andere Namen im PNR, einschließlich Zahl der Reisenden im PNR
7. Alle verfügbaren Kontaktinformationen (einschließlich Auftraggeberinformationen)
8. Alle verfügbaren Zahlungs-/Abrechnungsinformationen (ohne weitere Transaktionsdetails für eine Kreditkarte oder ein Konto, die nicht mit der die Reise betreffenden Transaktion verknüpft sind)
9. Reiseverlauf für den jeweiligen PNR
10. Reisebüro/Sachbearbeiter des Reisebüros
11. Code-Sharing-Informationen
12. Informationen über Aufspaltung/Teilung einer Buchung
13. Reisestatus des Fluggastes (einschließlich Bestätigungen und Eincheckstatus)
14. Informationen über Flugscheinausstellung (Ticketing), einschließlich Flugscheinnummer, Angabe, ob Flugschein für einfachen Flug (One Way) sowie Automatic Ticket Fare Quote (automatische Tarifabfrage)

II. Sharing of PNR:

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

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

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

III. Types of Information Collected:

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

Types of EU PNR Collected:

1. PNR record locator code
2. Date of reservation/issue of ticket
3. Date(s) of intended travel
4. Name(s)
5. Available frequent flier and benefit information (i.e., free tickets, upgrades, etc.)
6. Other names on PNR, including number of travelers on PNR
7. All available contact information (including originator information)
8. All available payment/billing information (not including other transaction details linked to a credit card or account and not connected to the travel transaction)
9. Travel itinerary for specific PNR
10. Travel agency/travel agent
11. Code share information
12. Split/divided information
13. Travel status of passenger (including confirmations and check-in status)
14. Ticketing information, including ticket number, one way tickets and Automated Ticket Fare Quote

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|---|---|
| 15. Sämtliche Informationen zum Gepäck | 15. All baggage information |
| 16. Sitzplatzinformationen, einschließlich Sitzplatznummer | 16. Seat information, including seat number |
| 17. Allgemeine Bemerkungen einschließlich OSI, SSI und SSR | 17. General remarks including OSI, SSI and SSR information |
| 18. Etwaig erfasste APIS-Daten | 18. Any collected APIS information |
| 19. Historie aller Änderungen der unter den Nummern 1 bis 18 aufgeführten PNR | 19. All historical changes to the PNR listed in numbers 1 to 18 |

Soweit sensible EU-PNR-Daten (d. h. personenbezogene Daten, aus denen die rassische oder ethnische Herkunft, politische Meinungen, religiöse oder weltanschauliche Überzeugungen oder die Gewerkschaftszugehörigkeit hervorgehen, sowie Daten über Gesundheit oder Sexualeben einer Person) gemäß den PNR-Codes und -Bezeichnungen, die das DHS im Benehmen mit der Europäischen Kommission festgelegt hat, in den oben genannten Arten von EU-PNR-Daten enthalten sind, verwendet das DHS ein automatisiertes System, das diese sensiblen PNR-Codes und -Bezeichnungen herausfiltert, und nutzt derartige Informationen nicht. Das DHS löscht die sensiblen EU-PNR-Daten unverzüglich, sofern nicht in einem Ausnahmefall (siehe folgenden Absatz) auf sie zugegriffen wird.

In Ausnahmefällen, in denen das Leben von betroffenen Personen oder Dritten gefährdet oder ernsthaft beeinträchtigt werden könnte, dürfen Beamte des DHS erforderlichenfalls andere als die vorstehend aufgelisteten Informationen in EU-PNR, einschließlich sensibler Daten, anfordern und verwenden. In einem solchen Fall wird das DHS ein Protokoll über den Zugang zu allen sensiblen Daten in EU-PNR führen und die Daten innerhalb von 30 Tagen löschen, sobald der Zweck, für den auf die Daten zugegriffen wurde, erfüllt ist und die weitere Speicherung der Daten nicht gesetzlich vorgeschrieben ist. Das DHS wird der Europäischen Kommission (GD JLS) in der Regel innerhalb von 48 Stunden mitteilen, dass auf derartige Daten, einschließlich sensibler Daten, zugegriffen wurde.

IV. Zugang und Rechtsmittel:

Das DHS hat eine Grundsatzentscheidung getroffen, wonach die administrativen Schutzvorkehrungen des Gesetzes über den Schutz der Privatsphäre (Privacy Act) ohne Ansehen der Staatsangehörigkeit oder des Wohnsitzlandes des Betroffenen auf im ATS gespeicherte PNR-Daten ausgeweitet werden, was auch die Daten europäischer Bürger einschließt. Im Einklang mit dem US-Recht verwaltet das DHS ferner ein System, das Einzelpersonen ohne Ansehen ihrer Staatsangehörigkeit oder ihres Wohnsitzlandes zugänglich ist und Rechtsmittel für Personen vorsieht, die Zugang zu PNR oder deren Berichtigung beantragen wollen. Die entsprechenden Regelungen können auf der Website des DHS (www.dhs.gov) abgerufen werden.

Außerdem werden PNR, die von oder für eine Einzelperson übermittelt wurden, der betreffenden Person gemäß dem U.S. Privacy Act und dem U.S. Freedom of Information Act (FOIA) zur Einsicht freigegeben. Gemäß dem FOIA hat jede Person (ohne Ansehen ihrer Staatsangehörigkeit oder ihres Wohnsitzlandes) Recht auf Zugang zu den Aufzeichnungen einer US-Bundesbehörde, es sei denn, dass die betreffenden Aufzeichnungen (oder ein Teil davon) durch eine gemäß dem FOIA anwendbare Ausnahmebestimmung vor der Offenlegung geschützt sind. Das DHS gestattet der Öffentlichkeit keinen Zugang zu PNR-Daten; ausgenommen davon sind die Betroffenen oder deren Bevollmächtigte gemäß den US-Rechtsvorschriften. Anträge auf Zugang zu persönlich identifizierbaren Daten in PNR, die vom Antragsteller bereitgestellt wurden, können bei folgender Stelle eingereicht werden: FOIA/PA Unit, Office of Field Operations, U.S. Customs and Border Protection, Room 5.5-C, 1300 Pennsylvania Avenue, NW, Washington, DC 20229 (Tel.: (202) 344-1850; Fax: (202) 344-2791).

In bestimmten Ausnahmefällen ist das DHS aufgrund des FOIA befugt, gemäß Titel 5 des United States Code, Abschnitt 552 Buchstabe b einem Antragsteller als unmittelbar Betroffenen die Einsicht in die PNR-Daten ganz oder teilweise zu ver-

To the extent that sensitive EU PNR data (i.e. personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, and data concerning the health or sex life of the individual), as specified by the PNR codes and terms which DHS has identified in consultation with the European Commission, are included in the above types of EU PNR data, DHS employs an automated system which filters those sensitive PNR codes and terms and does not use this information. Unless the data is accessed for an exceptional case, as described in the next paragraph, DHS promptly deletes the sensitive EU PNR data.

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

IV. Access and Redress:

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

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

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

weigern oder diese aufzuschieben. Nach dem FOIA ist jeder Antragsteller berechtigt, die Entscheidung des DHS, die Informationen nicht offenzulegen, auf administrativem oder gerichtlichem Wege anzufechten.

V. Durchsetzung:

Verwaltungs-, zivil- und strafrechtliche Durchsetzungsmaßnahmen bestehen nach US-Recht in Bezug auf Verletzungen der US-Vorschriften über den Schutz der Privatsphäre und die unerlaubte Offenlegung von Aufzeichnungen der US-Behörden. Einschlägige Vorschriften finden sich – unter anderem – in Titel 18 des United States Code, Abschnitte 641 und 1030 sowie in Titel 19 des Code of Federal Regulations, Abschnitt 103.34.

VI. Bekanntmachung:

Das DHS hat die Reisenden durch Veröffentlichungen im Federal Register (US-Bundesanzeiger) und auf seiner Website darüber unterrichtet, dass es PNR-Daten verarbeitet. Das DHS wird den Fluggesellschaften ferner ein zum öffentlichen Aushang bestimmtes Hinweisblatt zu den PNR-Erhebungs- und Rechtsmittelverfahren zur Verfügung stellen. Das DHS und die EU werden mit den betroffenen Kreisen in der Luftverkehrsbranche zusammenarbeiten, um diese Hinweise besser bekannt zu machen.

VII. Speicherung von Daten:

Das DHS speichert EU-PNR-Daten sieben Jahre lang in einer aktiven analytischen Datenbank; danach werden die Daten in einen ruhenden, nicht operationellen Status überführt. Auf ruhende Daten, die acht Jahre lang gespeichert werden, kann nur mit Zustimmung eines hochrangigen, vom US-Heimatschutzminister benannten DHS-Beamten zugegriffen werden, und zwar nur dann, wenn auf einen erkennbaren Fall, eine erkennbare Bedrohung oder ein erkennbares Risiko reagiert werden soll. Wir erwarten, dass EU-PNR-Daten am Ende dieses Zeitraums gelöscht werden; die Frage, ob und wann gemäß diesem Schreiben erhobene PNR-Daten vernichtet werden, wird im Rahmen weiterer Gespräche zwischen dem DHS und der EU erörtert werden. Daten, die mit einem bestimmten Fall oder einer bestimmten Ermittlung in Zusammenhang stehen, können in einer aktiven Datenbank gespeichert werden, bis der Fall bzw. die Ermittlung archiviert ist. Das DHS hat die Absicht, anhand der in den nächsten sieben Jahren gewonnenen Erfahrungen zu überprüfen, wie sich die Speichervorschriften auf die Maßnahmen und Ermittlungen auswirken. Das DHS wird die Ergebnisse dieser Überprüfung mit der EU erörtern.

Die genannten Speicherungsfristen gelten auch für EU-PNR-Daten, die aufgrund der Abkommen zwischen der EU und den Vereinigten Staaten vom 28. Mai 2004 und vom 19. Oktober 2006 erhoben wurden.

VIII. Übermittlung:

In unseren jüngsten Verhandlungen haben wir darauf hingewiesen, dass das DHS bereit ist, so rasch wie möglich zu einem „Push“-System für die Übermittlung der PNR von den zwischen der EU und den Vereinigten Staaten operierenden Fluggesellschaften an das DHS überzugehen. Dreizehn Fluggesellschaften haben sich bereits für dieses Verfahren entschieden. Die Initiative für den Übergang zum Push-System liegt bei den Fluggesellschaften; diese müssen Ressourcen für die Umstellung ihrer Systeme bereitstellen und mit dem DHS zusammenarbeiten, um die technischen Anforderungen des DHS zu erfüllen. Das DHS wird für die Übermittlung von Daten durch diese Fluggesellschaften spätestens bis zum 1. Januar 2008 unmittelbar zu einem solchen System bei sämtlichen Fluggesellschaften übergehen, die ein den technischen Anforderungen des DHS entsprechendes System eingerichtet haben. Für die Fluggesellschaften, die kein derartiges System einrichten, bleibt das bisherige System so lange in Kraft, bis sie ein System eingerichtet haben, das den technischen Anforderungen des DHS für die Übermittlung von PNR-Daten entspricht. Der Übergang zum Push-System bedeutet jedoch nicht, dass die Fluggesellschaften in eigenem

requester has the authority to administratively and judicially challenge DHS's decision to withhold information.

V. Enforcement:

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

VI. Notice:

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

VII. Data Retention:

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

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

VIII. Transmission:

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

Ermessen entscheiden können, wann oder wie sie welche Daten im Rahmen dieses Systems übermitteln. Diese Entscheidung liegt nach US-Recht beim DHS.

Im Normalfall werden dem DHS erstmals 72 Stunden vor dem geplanten Abflug PNR-Daten übermittelt, die anschließend – soweit erforderlich – aktualisiert werden, damit ihre Richtigkeit gewährleistet ist. Die Gewährleistung, dass Entscheidungen auf der Grundlage rechtzeitig übermittelter und vollständiger Daten getroffen werden, gehört zu den wichtigsten Sicherungsmaßnahmen für den Schutz personenbezogener Daten, und das DHS arbeitet mit einzelnen Fluggesellschaften an der Einbeziehung dieses Konzepts in ihre Push-Systeme. Das DHS kann PNR früher als 72 Stunden vor dem geplanten Abflugtermin anfordern, wenn es Hinweise darauf gibt, dass ein früher Zugriff erforderlich ist, damit auf eine spezifische Bedrohung für einen Flug, eine Reihe von Flügen, eine Strecke oder andere Umstände im Zusammenhang mit den in Abschnitt I genannten Zwecken reagiert werden kann. Das DHS wird diesen Ermessensspielraum mit aller Umsicht und unter Wahrung der Verhältnismäßigkeit nutzen.

IX. Gegenseitigkeit:

Während unserer jüngsten Verhandlungen bestand Einvernehmen darüber, dass das DHS erwartet, dass von ihm nicht verlangt wird, im Rahmen seines PNR-Systems Datenschutzmaßnahmen zu ergreifen, die strenger sind als diejenigen, die europäische Behörden für ihre innerstaatlichen PNR-Systeme anwenden. Das DHS verlangt von europäischen Behörden nicht, in ihren PNR-Systemen Datenschutzmaßnahmen zu ergreifen, die strenger sind als diejenigen, die die USA für ihr PNR-System anwenden. Werden die Erwartungen des DHS nicht erfüllt, behält es sich vor, einschlägige Regelungen des DHS-Schreibens auszusetzen und gleichzeitig Konsultationen mit der EU zu führen, um eine schnelle und zufrieden stellende Lösung herbeizuführen. Wird in der Europäischen Union oder in einem oder mehreren ihrer Mitgliedstaaten ein Fluggast-Informationssystem eingeführt, das die Fluggesellschaften verpflichtet, den Behörden PNR-Daten von Personen zur Verfügung zu stellen, deren Reiseweg einen Flug zwischen den USA und der Europäischen Union einschließt, so beabsichtigt das DHS, die Zusammenarbeit der seiner Zuständigkeit unterliegenden Fluggesellschaften aktiv und streng nach dem Gegenseitigkeitsprinzip zu fördern.

Zur Förderung der polizeilichen und justiziellen Zusammenarbeit wird das DHS den zuständigen US-Behörden nahelegen, den Polizei- und Justizbehörden der betroffenen Mitgliedstaaten sowie gegebenenfalls Europol und Eurojust analytische Informationen, die aus PNR-Daten abgeleitet wurden, zu übermitteln. Das DHS erwartet, dass die EU und ihre Mitgliedstaaten ebenfalls ihren zuständigen Behörden nahelegen, dem DHS und anderen betroffenen US-Behörden analytische Informationen, die aus PNR-Daten abgeleitet wurden, zur Verfügung zu stellen.

X. Überprüfung:

Das DHS und die EU werden die Durchführung des Abkommens, dieses Schreibens, der PNR-Regelungen und -Verfahren der Vereinigten Staaten und der EU sowie alle Stellen, die Zugriff auf sensible Daten hatten, regelmäßig überprüfen, um dazu beizutragen, dass unsere Verfahren zur Verarbeitung von PNR ordnungsgemäß und unter Gewährleistung des Schutzes der Privatsphäre durchgeführt werden. Bei der Überprüfung werden die EU durch das für den Bereich Recht, Freiheit und Sicherheit zuständige Mitglied der Kommission und das DHS durch den Heimatschutzminister oder durch einen für beide Seiten akzeptablen Beamten, den jede Seite im Einvernehmen benennen kann, vertreten. Die EU und das DHS werden die Einzelheiten der Überprüfungsmodalitäten gemeinsam festlegen.

Die Vereinigten Staaten werden auf Gegenseitigkeit im Rahmen dieser regelmäßigen Überprüfung um Informationen über die PNR-Systeme der Mitgliedstaaten bitten, und die Vertreter von Mitgliedstaaten, die PNR-Systeme betreiben, werden zur Teilnahme an den Gesprächen eingeladen.

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

IX. Reciprocity:

During our recent negotiations we agreed that DHS expects that it is not being asked to undertake data protection measures in its PNR system that are more stringent than those applied by European authorities for their domestic PNR systems. DHS does not ask European authorities to adopt data protection measures in their PNR systems that are more stringent than those applied by the U.S. for its PNR system. If its expectation is not met, DHS reserves the right to suspend relevant provisions of the DHS letter while conducting consultations with the EU with a view to reaching a prompt and satisfactory resolution. In the event that an airline passenger information system is implemented in the European Union or in one or more of its Member States that requires air carriers to make available to authorities PNR data for persons whose travel itinerary includes a flight between the U.S. and the European Union, DHS intends, strictly on the basis of reciprocity, to actively promote the cooperation of the airlines within its jurisdiction.

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

X. Review:

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

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

Wir vertrauen darauf, dass diese Erläuterungen Ihnen das Verständnis unserer Verfahrensweise bei der Behandlung von EU-PNR-Daten erleichtert haben.

Schreiben der EU an die Vereinigten Staaten

Secretary Michael Chertoff
U.S. Department for Homeland Security
Washington DC 20258

wir danken Ihnen für Ihr Schreiben an den Vorsitz des Rates und an die Kommission, in dem Sie erläutern, wie das DHS mit PNR-Daten verfährt.

Ihre in Ihrem Schreiben an die Europäische Union erläuterten Zusicherungen ermöglichen es der Europäischen Union, davon auszugehen, dass das DHS zu den Zwecken des im Juli 2007 von den Vereinigten Staaten und der Europäischen Union unterzeichneten internationalen Abkommens über die Verarbeitung von Fluggastdatensätzen (Passenger Name Records – PNR) und deren Übermittlung einen angemessenen Schutz der Daten gewährleistet.

Die EU wird ausgehend von dieser Feststellung alle erforderlichen Schritte unternehmen, um internationale Organisationen oder Drittländer davon abzuhalten, sich in die Übermittlung von PNR-Daten der EU an die Vereinigten Staaten einzumischen. Die EU und ihre Mitgliedstaaten werden außerdem ihren zuständigen Behörden nahelegen, dem DHS und anderen zuständigen Behörden der Vereinigten Staaten analytische Informationen, die aus PNR-Daten abgeleitet wurden, zur Verfügung zu stellen.

Wir nehmen in Aussicht, mit Ihnen und der Luftverkehrsbranche zusammenzuarbeiten, um sicherzustellen, dass die Fluggäste darüber informiert werden, auf welche Weise staatliche Stellen ihre Informationen nutzen dürfen.

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

EU letter to U.S.

Secretary Michael Chertoff
U.S. Department for Homeland Security
Washington DC 20258

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

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

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

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