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**(8 July 2016)**

**EXERCISE:**

**"HARM TEST" ANALYSIS**



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 27 September 2010**

**13986/10**

**LIMITE**

**EXERCISE:  
"HARM TEST" ANALYSIS**

**JAI 766  
DATAPROTECT 68  
AVIATION 137  
RELEX 792**

**NOTE**

from:	Presidency
to:	Coreper/Council
prev. docs:	13931/10 JAI 761 USA 108 DATAPROTECT 64 AVIATION 128 RELEX 785 13932/10 JAI 762 AUS 14 DATAPROTECT 65 AVIATION 129 RELEX 786 13933/10 JAI 763 CDN 12 DATAPROTECT 66 AVIATION 130 RELEX 787 13954/10 JAI 764 DATAPROTECT 67 AVIATION 134 RELEX 789
Subject:	EU external strategy on Passenger Name Record (PNR) data - Handling of draft negotiation mandates for PNR Agreements with Canada, the United States of America and Australia

The European Union (and the European Community) has signed three agreements providing for the processing and transfer of Passenger Name Record (PNR) data by air carriers to the authorities of third countries: Canada <sup>1</sup> , the United States of America <sup>2</sup> and Australia <sup>3</sup> . The latter two Agreements are being applied on a provisional basis, but have not yet been concluded.	<b>Harm test:</b>          <b>Conclusion:</b>
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<sup>1</sup> OJ L 91, 29.3.2006, p. 53, OJ L 91, 29.3.2006, p. 49 and OJ L 82, 21.3.2006, p. 15.

<sup>2</sup> OJ L 204, 4.8.2007, p. 16. The 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) was signed on 23 and 26 July 2007, subject to its conclusion at a later date. It is applied provisionally as from 26 July 2007.

<sup>3</sup> OJ L 213, 8.8.2008 p. 49. The Agreement between the European Union and Australia on the processing and transfer of European Union-sourced passenger name record (PNR) data by air carriers to the Australian Customs Service was signed on 30 June 2008, subject to its conclusion at a later date. It is applied provisionally as from 30 June 2008.





Before starting an in-depth discussion on the content of the draft negotiation mandates, the Presidency would like to submit the following questions regarding the handling of these files to the Council:

1) The Commission Communication states that all PNR Agreements with third countries should respect certain general criteria. It also underlines that “[i]n the interest of ensuring an as uniform as possible treatment of passengers and reducing the costs on the industry, it is important that the content and standards of future agreements with third countries are as similar as possible”. The content of the proposed negotiating directives is identical for the three recommendations. In the same vein, the Presidency submits that the Council should act in a consistent manner regarding the content of the three draft negotiation mandates: any amendment to the negotiating directives should be made to all three negotiation mandates so that the content of the negotiating directives to be adopted with regard to each of the three countries will be identical. This does not detract from the fact that during the negotiations, the Commission may have to differentiate the wording of the three Agreements as a result of the different legal and institutional setup of the countries concerned. The Presidency proposes that the Council adopt the three negotiation mandates at the same time.

**Harm test:**

### Conclusion:

