

## 歐盟佐審官建議修正與加拿大之「航空乘客個人資料共享協議(草案)」，以維護人權



歐洲聯盟法院(CJEU)佐審官 (Advocate General) Paolo Mengozzi 於今年(2016) 9月8日提出一份不具拘束力之「航空乘客個人資料共享協議(草案)」( European Union on the transfer and processing of passenger name record data (“PNR Agreement”)) 法律意見，認為協議應遵守歐盟憲章有關人權之基本原則。此份法律意見為歐洲聯盟法院首次就國際協議草案，檢視與歐盟憲章有關規範之一致性。

### [背景]

PNR協議草案於2010年5月開始協商，2014年6月25日簽署。主要以反恐為目的讓歐盟與加拿大交換航空乘客資訊(包括旅客姓名、旅行日期、行程記錄、機票、聯繫資訊、旅行社等其他有關資訊)。除加拿大之外，歐盟亦與美國、澳洲簽有類似資料共享協議。關注到PNR協議有關隱私、人權之議題，歐盟議會將PNR協議提至歐洲聯盟法院審議。

### [法律意見]

佐審官認為，協議同意在特定條件下就限定目標之乘客蒐集其敏感資訊，未違反歐盟憲章；然PNR協議草案仍有部分內容違反歐盟憲章：即草案允許歐盟、加拿大主管機關使用乘客姓名等數據，已逾越預防恐怖組織犯罪和跨國犯罪的必要範圍。

因歐洲聯盟法院去年已廢除歐盟與美國之間之安全港(Safe Harbor)法案，隨後雖起草隱私保護協議(Privacy Shield)，但仍有意見質疑隱私保護之完整性。PNR協議草案法律意見之提出，可窺歐盟關於隱私保護之立場。

### 相關連結

- [Agreement between the United States of America and the European Union on the use and transfer of passenger name records to the United States Department of Homeland Security, OJ L 215, 11.8.2012, p. 5–14](#)
- [OPINION OF ADVOCATE GENERAL MENGOZZI, Request for an opinion — Admissibility — Draft agreement between Canada and the European Union on the transfer and processing of Passenger Name Record data — ‘Passenger Name Record \(PNR\)’ data — Compatibility of the draft agreement with Article 16 TFEU and Articles 7 and 8 and Article 52\(1\) of the Charter of Fundamental Rights of the European Union — Legal basis \(2016\)](#)
- [Advocate General Advises Revision of PNR Agreement between EU and Canada, PRIVACY & INFORMATION SECURITY LAW BLOG, Sept. 9, 2016](#)

### 林其樺

專案經理 編譯整理

上稿時間：2016年10月

資料來源：

Agreement between the United States of America and the European Union on the use and transfer of passenger name records to the United States Department of Homeland Security, OJ L 215, 11.8.2012, p. 5–14, [http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1416915581157&uri=CELEX:22012A0811\(01\)](http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1416915581157&uri=CELEX:22012A0811(01)) (last visited Sept. 30, 2016).

OPINION OF ADVOCATE GENERAL MENGOZZI, Request for an opinion — Admissibility — Draft agreement between Canada and the European Union on the transfer and processing of Passenger Name Record data — ‘Passenger Name Record (PNR)’ data — Compatibility of the draft agreement with Article 16 TFEU and Articles 7 and 8 and Article 52(1) of the Charter of Fundamental Rights of the European Union — Legal basis (2016),

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=183140&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=783683> (last visited Sept. 30, 2016).

Advocate General Advises Revision of PNR Agreement between EU and Canada, PRIVACY & INFORMATION SECURITY LAW BLOG, Sept. 9, 2016, <https://www.huntonprivacyblog.com/2016/09/09/advocate-general-advises-revision-pnr-agreement-eu-canada/> (last visited Sept. 30, 2016).

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