

## 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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