2nd European API-PNR Day

Airline Perspective on Handling Data Protection Considerations

FRA RD/DSB, Corporate Data Protection
Actual Situation
Dramatical Increase of Data Requests

Airlines are confronted with requests for the transmission of API and/or PNR data
• For in- and outbound flights
• Some countries request data even for overflights
• Data requirements for passengers and crews

The number of requests are increasing dramatically
• More than 60 States have data exchange provisions in effect.
• Recent requests from numerous countries such as: Argentina, Brazil, Indonesia, Japan, Malaysia, Mexico, Qatar, Russia, Saudi Arabia, Singapore, South Korea, United Arab Emirates
• Requests come also from european countries (even within Schengen).

The requests are placed from different authorities and entities
- Immigration
- Health Authorities
- Others...
- Customs
- Police
Challenging Legal Situation

The transmission of personal passenger data is not allowed without legal regulations

- Legislation of requesting countries must be in place

- EU Data Privacy Directive EC 95-46-EC

- PNR agreements currently are signed with only three countries: (USA, Canada, Australia)

The legal situation is very difficult

- Conflicts between laws of other countries and own national laws (data protection laws, e.g. Federal Data Protection Act of Germany)

- Different interests / positions of governmental bodies (EU Parliament, EU Commission, Ministries of member states...)
API (Advance Passenger Information)

API is data collected by airlines only for governmental and not for airlines purposes.

API consists of data that is stored in the machine readable zone of a travel document.

Additional data would cause legal problems.

Data of machine readable zone is standard and its transmission is internationally set up by ICAO, IATA and WCO.

API data for overflights presents lots of legal questions and challenges.
PNR (Passenger Name Record)

PNR data elements are collected for airlines‘ operational and commercial processes.

Data found in the machine readable zone of a passport is not a part of PNR.

PNRs are created at time of travel intent. They can be cancelled at any time.

PNRs are created by many intermediaries which the airlines do not influence.

PNR data is not verified. There are no name checks, or any other checks on any data provided by the passenger and/or travel agent for the reservation.

PNR does not fulfill sovereign requirements of governments.

PNR may contain sensitive personal data (e.g. health, religion etc.)

International or bilateral agreement are mandatory for european carriers
EU Countries Requesting PNR Data

- A number of EU countries are preparing to introduce a PNR Program. Airlines are stressing the importance of adopting a common EU framework for the collection and transmittal of PNR data. However, this may raise a reciprocity issue with third countries requesting PNRs from EU airlines.

- EU Carriers are requesting the exclusion of PNR Data transmission for intra-EU flights and especially between Schengen countries.
  
  - Embrace the principle of Freedom of Movement within the Schengen zone.
  
  - No legal framework for providing PNR data within EU. No border and customs control performed within Schengen.
  
  - Heavy costs burden for EU airlines (implementation costs, transmission costs as well as maintenance costs are solely shouldered by the airlines).
  
  - Singling out of airlines from other modes of transportation and placing them in an unfavourable competitive position.
European Airlines in a Conflicting Situation

**PNR Transmission Requirements**

- Many non-EU countries are requesting PNR Data from EU carriers, and are pressuring them to comply to their national laws and requirements.

- Absence of a legal framework or agreements with third countries prevent EU airlines from complying.

- A number of EU Member States are preparing to introduce a PNR program, which may raise a reciprocity issue with third countries requesting PNRs from EU airlines.

**EU and National Data Privacy Laws**

- The European Data Privacy Directive 95-46-EC does not allow for the transmission of personal data.

- National Data Privacy laws, e.g. the German Federal Data Protection Law § 43 prohibits German carriers to transmit personal data and sets penalty of up 300,000 € per case ....

- No unified regulation regarding data usage, transmission, retention, expiration to third party countries exits.

A legal solution is needed urgently!
Negative Consequences for the Airlines

Airlines are put under constant pressure to comply with the requirements and legal regulations of those countries.

Fines and operational disadvantages like delaying flights up to withdrawal of the landing rights are announced.

Local airline staff are facing lots of pressure by local authorities to deliver data.

The Airlines are being squeezed between the fulfillment of national and EU data protection laws and third country requirements and authorities requesting passenger data.

Discrimination between modes of transportation (airlines, bus, train, ship, car etc.) regarding obligations to submit data.
European Airlines need the Support from EU entities to provide legal framework to comply with data requirements

- EU Parliament
- EU Commission
- LIBE Committee
- Art. 29 WP
- DG Home / Move
- National Authorities of 28 Member States
- Other