



**WORKING PAPER**

**FACILITATION PANEL (FALP)**

**ELEVENTH MEETING**

**Montréal, 13-16 January 2020**

**Agenda Item 3: PNR Task Force: Recommendations for PNR SARPs**

**COMMENTS BY THE AIRLINE INDUSTRY ON PROPOSED PNR  
STANDARD 9.34 AND RECOMMENDED PRACTICE 9.36**

(Presented by the International Air Transport Association (IATA))

**SUMMARY**

The airline industry is supportive of passenger data programs and acknowledges its role in supporting States to enhance their national border security as well as its responsibility in the global fight against terrorism.

However, some proposals for Standards and Recommended Practices (SARPs) on the collection, use, processing and protection of Passenger Name Record (PNR) data contained in the FALP/11-WP/2 may be challenging for carriers.

This Working Paper aims at raising awareness among the FALP members and observers of the issues identified by IATA with the proposed Standard 9.34 and Recommended Practice 9.36.

**Action by the FAL Panel:**

The FAL Panel is invited to address the airline industry's concerns raised in this working paper and amend the proposed Standard 9.34 and Recommended Practice 9.36 as set out in Appendix A before submitting them to the ICAO Air Transport Committee (ATC).

**1. INTRODUCTION**

1.1 The PNR data that States use or plan to use to perform risk-assessment and identify possible high-risk individuals is transmitted by aircraft operators. Those records are created by aircraft operators for their commercial and operational purposes.

1.2 The number of States requiring PNR data is increasing and collaboration with aircraft operators is of utmost importance for ensuring an orderly global exchange of data. The nature of PNR data, the extend of the role of aircraft operators and the operational functionalities of their systems must be acknowledged in order to ensure a fruitful cooperation between all stakeholders.

1.3 IATA praises the progress made by the ICAO PNR Task Force (TF) at the meeting in Montreal in December 2019 and would like to highlight that further discussion is needed before the Standard 9.34 and the Recommended Practice 9.36 are recommended for adoption.

## 2. DISCUSSION

2.1 In reviewing the proposed Standard 9.34 and the Recommended Practice 9.36 (Appendix A), IATA would like to bring to the attention of the Facilitation Panel the following points:

2.1.1 Regarding 9.34 (a), IATA would like to obtain clarifications on which body will communicate on the compliance status of States. Aircraft operators should be given the means to know with full certainty which States are compliant in order to avoid being instructed differently on whether to transmit the data or not by States that could have different views on their respective compliance status.

2.1.2 Regarding 9.34 (b), IATA would like to draw attention to the challenges pose with having two regimes of Standard (basic vs higher) and the suitability of this approach in a global Standard applicable to all ICAO Contracting States. Should the approach in (b) be pursued, IATA would like to obtain clarifications on which body will communicate compliance status of States and with what regime of Standard.

2.1.3 Regarding 9.34 (d), IATA would like to understand the rationale of the segment “*or must penalize an aircraft operator*” introduced at the end of the PNR TF meeting in Montreal. The main purpose of the proposed paragraph (c) is to address the transfer of PNR data during potential disputes between ICAO Contracting States and it seems inappropriate to refer to “aircraft operator” in that specific paragraph. IATA calls ICAO Contracting States to leave aircraft operators and their passengers outside possible disputes that could emerge between them related to the transfer of PNR data. Penalties as in the proposed Paragraph (c) have the potential of severely hampering the air transportation between two States.

2.2 IATA notes that the Standard 9.34 aims for States to adopt a collaborative approach for resolving issues between two States. However, it does place the carriers openly at risk in being caught between two different legislations and having to choose between the least stringent penalty regimes. The current wording of proposed Standard 9.34 may put carriers in an even more cumbersome situation that the one they face today. Carriers would need the same instructions from the two States that are in consultations or negotiations on whether to transfer or not the PNR data.

2.2.1 Lastly, it is not justifiable that an aircraft operator be penalized for complying with State B’s requirements because States A objects. Penalties or sanctions are meaningful only when an aircraft operator is effectively found guilty of not transmitting the data wilfully. IATA proposed to raise the proposed Recommended Practice 9.36 to a Standard.

## 3. RECOMMENDATIONS

3.1 The FAL Panel is invited to take into consideration these airline industry’s concerns during the discussions pertaining to the PNR Standard and amend the proposed Standard 9.34 and Recommended Practice 9.36 as out in Appendix A before submitting them to the ICAO ATC.

-----

APPENDIX A

**DRAFT ARTICLA 9.34 AS PROPOSED BY THE PNR TASK FORCE TO THE ICAO  
FACILITATION PANEL IN ITS  
PROPOSALS FOR AMENDMENT TO ANNEX 9**

9.34 Contracting States shall:

(a) not inhibit or prevent the transfer of PNR data by an aircraft operator or other relevant party, nor sanction, impose penalties or create unreasonable obstacles on aircraft operators or other relevant parties that transfer PNR data to another Contracting State provided that Contracting States' PNR data system is compliant with the Standards contained in Section D, Chapter 9 of Annex 9; and

(b) retain the ability to introduce or maintain higher levels of protection of PNR data, in accordance with their legal and administrative framework;

(c) in line with the above, retain the ability to negotiate additional arrangements with other Contracting States in particular to: promote collective security; achieve higher levels of protection of PNR data, including on data retention; or establish more detailed provisions relating to the transfer of PNR data, provided those measures do not otherwise conflict with the Standards contained in Section D, Chapter 9 of Annex 9; and

(d) in any instance where Contracting States have determined they must inhibit, prevent or otherwise obstruct the transfer of PNR data ~~or must penalize an aircraft operator~~, they will do so with transparency and with the intent of resolving the situation which caused that determination.

Note 1.— Under 9.34a, Contracting States are expected to allow other Contracting States compliant with the PNR Standards to receive PNR data, at least provisionally, while engaging in consultations or negotiations, as necessary. In these instances, Contracting States are expected to demonstrate, to any requesting Contracting State, their compliance with these Standards and under 9.34b and 9.34c take into consideration any additional measures requested by another Contracting State. A demonstration of compliance with the PNR Standards, upon request, should take place as soon as possible, and, among other things, could occur based on bilateral consultations and/or the information in the ICAO online compliance checklist for Annex 9 – Facilitation contained in the Electronic Filing of Differences (EFOD) system. Further, Contracting States are expected to work through this process in good faith and in a timely manner. Under 9.34d, when a Contracting State assesses that another Contracting State is non-compliant with these PNR Standards, the Contracting State making that assessment may inhibit the transfer of PNR data to another Contracting State.

Note 2.— When entering information in the ICAO online compliance checklist for Annex 9 – Facilitation contained in the EFOD system, Contracting States are able to utilize the National Air Transport Facilitation Committee (NATFC).

9.36 ~~Recommended Practice.~~— While attempting to resolve PNR data transfer disputes Contracting States ~~should~~ **shall** not penalize aircraft operators.