



FACILITATION PANEL (FALP)

FIFTH MEETING

Montréal, 31 March to 4 April 2008

Recommendations Relating to ICAO's Best Practices Relating to Passenger name Record (PNR)

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

Agenda Item 4: Other matters

SUMMARY

There is a growing interest in the use of PNR data worldwide for ant-terrorism and law enforcement purposes. The current ICAO guidelines on PNR data provision provide a good set of principles that States should adhere to when requesting PNR data from air carriers. However, newly emerging requirements from several countries have highlighted the need to include several new points in the guidelines.

Action by the FALP is in paragraph 3.

<i>References:</i>	<i>Annex 9, Facilitation</i> Doc 9838, Report of the Twelfth Session of the Facilitation Division (Cairo, 22 March - 1 April 2004) Passenger Name Record (PNR) Data Guidelines, 9 June 2005
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1 INTRODUCTION

1.1 ICAO Annex 9, recommended practice 3.48 provides a reference to ICAO guidelines on Passenger Name Record Access (May 2005). However, IATA believes that there have been sufficient developments in the requirement for PNR data from many countries to warrant the inclusion of some additional guidelines.

1.2 Arrangements for the transmission of PNR data in the context of anti-terrorism measures and organised crime already exist between the EU and the US, and the EU and Canada and are limited to reservations made for travel by air. Several European States have now enacted primary legislation for the gathering of PNR data from air carriers and the European Commission has proposed a framework agreement to better define the terms of PNR data provision and use. Other countries worldwide are also now considering the use of PNR data, most notably Korea and Australia. Since no agreements exist

between the EU and these countries, and no bilateral arrangements are yet in place between individual states, the rules governing PNR data provision, particularly with regard to data protection, are unclear.

1.3 This document proposes some additional key principles that should be adopted when PNR data is required by a state for anti-terrorism or law enforcement purposes.

2 PROPOSED CHANGES TO PNR GUIDELINES

2.1 General Principles

2.1.1 The current guidelines state that States should not unduly restrict PNR data transfer by aircraft operators to relevant authorities of another State, except where the State does not have adequate data protection measures in place.

2.1.2 In recent experience, this puts the carriers into an extremely difficult position when it is deemed that a State does not have adequate data protection measures, as the requesting authority will still continue, under their own law, to require data and impose sanctions against carriers who do not provide it.

2.1.3 IATA asks that the guidelines be amended to provide some indication of what action States should take in this instance to enable the Air Carriers to continue operating to the country requiring PNR data.

2.1.4 Suggested wording addition to section 4.3 of the guidelines:

Where the existing laws of the State of departure prevent a carrier from complying with the requirements of the destination State, the destination State should suspend the requirement for PNR data until the conflict is resolved, and no action should be taken against a carrier who is not able to supply data in this circumstance.

2.1.5 Suggested section addition at 12.4 of the guidelines:

Where a State requiring PNR data is not proven to have adequate data protection measures in place, States should enter into bilateral or multilateral negotiations in order to reach an agreement on data protection measures, before commencing a PNR programme.

2.2 Harmonised Approach

2.2.1 Over the past year, several States have requested the provision of PNR data without publishing clear guidance on how the data should be provided (within ICAO guidelines), and without providing reasonable notice to the air carriers to for making systems changes.

2.2.2 PNR data provision should not be required by a Member State until it (the State) has the necessary protocols and standards in place in accordance with the agreement. Otherwise an unacceptable burden will be placed on carriers to meet ad-hoc or manual requirements.

2.2.3 Suggested addition to Section 6.2:

g) ensure that data transfer protocols and appropriate automated systems are in place to access or receive the data in a manner consistent with these guidelines before implementing a legislative requirement for PNR data.

2.3 Responsibility

2.3.1 The responsibility for the provision of data should lie with the **operating carrier**. In the simplest terms this has been described for the purpose of clarity as the carrier whose logo is shown on the tailfin of the aircraft. In some cases, this may not be an exact definition due to aircraft leasing arrangements but is used here for illustrative purposes.

2.3.2 In the case of a code-share flight operation (operated by one carrier but sold under a marketing agreement by another), there may be more than one flight number allocated to the flight. However, the responsibility for passenger data transmission must lie solely with one carrier and one carrier only. The other carrier (or carriers in the event of multiple code-sharing arrangements) whose airline designator appears on the flight schedule is acting, for the purposes of PNR data provision, solely as an agent for the operating carrier. Travel agents, booking agents, consolidators and other third parties should not be expected to or obliged to provide passenger data. This applies equally to airlines that have sold seats on another airline.

2.3.3 Reservations data is passed from an agent to an airline and may contain very little information. Section 5.2 of the ICAO guidelines for PNR data provision states that ‘States should not require an operator to provide PNR data that is not already collected or held in the operator’s Reservation or Departure Control systems.’ Carriers should not be expected or obliged to collect additional data for provision of passenger information to authorities, including data from another carrier acting as an agent.

2.3.4 Suggested additional point 6.3:

States should require PNR data only from carriers who directly operate flights that are scheduled to enter, depart or transit through airports situated in their territory. States should not require data from any agent or third party marketing or selling tickets on such flights, including carriers operating in a code-share arrangement.

2.4 Sanctions against Code Sharing Carriers

2.4.1 In recognition of the point above, penalties for non-compliance must not be imposed on a carrier who does not operate a flight into a state requiring PNR data regardless of code share arrangements.

2.4.2 Suggested addition to section 16 (to be changed to Sanctions and Penalties):

States should not hold carriers legally, financially or otherwise responsible for transferring PNR data for flights that they do not physically operate to, from or through the State imposing the requirement.

2.5 Frequency of Data Provision

2.5.1 The ICAO guidelines suggest that the frequency and timing of data transfer should take into account the limitations and capabilities of operator’s systems. IATA recommends that this guideline be strengthened to prevent unreasonable demands on carriers to repeatedly transmit the same data.

2.5.2 For example, there has been a recent example of a State raising a requirement for four

scheduled pushes plus an ad-hoc capability that is not technically feasible for most reservations systems. This puts an unreasonable burden on the carriers in terms of systems development and transmission costs. In addition, there can be no benefit from the provision of PNR data on departure for anti-terrorism measures, particularly when it has been provided in advance of departure for analysis.

2.5.3 In specific circumstances, where there is a real and present threat concerning a specific passenger, carriers can provide additional data manually to the authorities upon request.

2.5.4 IATA suggests that the guideline should restrict the number of pushes (data transfer initiated by the carrier) of data that can reasonably be required, and limits the method of provision to scheduled push transactions only.

2.5.5 *Suggested addition to section 8.2:*

The timing and frequency of data transfer should be limited to that strictly necessary for law enforcement purposes. States should routinely request data on a scheduled basis, with a maximum of two iterations of data per flight.

In exceptional circumstance and where States identify a specific threat, data for a given passenger or PNR may be requested on an ad-hoc basis.

2.6 Penalties for Quality of Data

2.6.1 The recent EU Framework Proposal suggest that States might sanction air carriers for instances in which “incomplete or erroneous data” is transmitted. Since operators cannot verify the accuracy or completeness of PNR data, the operator should not be held legally or financially responsible for errors or omissions in the data provided by the passenger or his representative.

2.6.2 The only context where sanctions might be applied would include failure to transmit data when required or in instances where intentional modification of the data by the air carrier prior to transmission is proven.

The ICAO guidelines already include this point in section 16.1 under the heading of ‘Other Issues’. IATA suggests that this point is highlighted by moving it into its own section renamed “Sanctions and Penalties” and the current 16.2 moved into a new section 17.

3 ACTION BY THE FALP

3.1 The FALP is invited to:

- Note the suggested changes to the PNR guidelines proposed in this document.
- Recommend that the ICAO Secretariat join with interested Contracting States, IATA and the Air Transport Industry to develop and incorporate changes to the guidelines based on the recommendations contained in this paper.