



FACILITATION PANEL (FALP)

THIRTEENTH MEETING

Montréal, 26 February to 1 March 2024

Agenda Item 2: Recent Facilitation-related developments in the United Nations and other international organizations

TACKLING PASSENGER NAME RECORD (PNR) DATA CHALLENGES, AND CONFLICTS OF DATA PROTECTION LAWS

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

SUMMARY

Amendment 28 to Annex 9 introduced a significant number of new Standards and Recommended Practices (SARPs) relating to Passenger Name Record (PNR) data. Three years after those became applicable, and in order to contribute to the discussion on the way forward, IATA would like to report on the challenges the airline industry is facing with PNR data transfers as they face inconsistencies and conflicts of national data protection laws.

Action by the FAL Panel:

The Facilitation Panel is invited to:

- a) take note of the information contained in this paper; and
- b) take into consideration the proposals it contains for the discussion on the way forward on the issue of the interaction of international carriage by air with data protection laws.

1. INTRODUCTION

1.1 The airline industry supports passenger data programs and acknowledges its role in enabling Contracting States to enhance their risk assessment and national border security processes, as well as contributing to the global fight against terrorism. This requirement on aircraft operators to transmit passenger data to authorities must however not come with the consequences of jeopardizing their international operations, which is regrettably becoming a reality. The challenge posed by personal data protection laws where those inhibit international transfers of Passenger Name Record (PNR) data has become critical with the growing number of States requiring PNR data, from 25 in 2018 to 69 Contracting States in January 2024.

1.2 The obligation on all States to develop their capability to collect, process and analyze PNR data was made in the United Nations Security Council Resolution (UNSCR) 2396 (2017). The same resolution also urged International Civil Aviation Organization (ICAO) to work with its Member States to establish a standard for the collection, use, processing and protection of PNR data. An ICAO PNR Task Force was established which drafted a set of PNR Standards and Recommended Practices (SARPs) (commonly referred to as the ‘PNR SARPs’) which were adopted by the Eleventh Meeting of the Facilitation Panel (FALP/11) in January 2020 and became applicable in February 2021.

1.3 The International Air Transport Association (IATA) has officially raised concerns with the PNR SARPs as they do not provide the legal clarity and certainty that airlines need when confronted with conflicting legislation and regulations. This is deeply concerning as States have the ability to impose fines on airlines when they are trapped in such conflicting situations – or even to suspend airlines’ operations. These concerns were raised to the Air Transport Committee (ATC) as recorded in AT-SD 219/2 17/2/2020 and in response to the State Letter EC 6/3 – 20/14 *Proposed amendment to Annex 9* (25 February 2020) as reported in C-WP/15048 25/5/2020 *Adoption of Amendment 28 to Annex 9* — Facilitation.

1.4 At the 41st Session of the ICAO Assembly in September 2022, IATA tabled the A41-WP/73, *International Carriage by Air and Data Protection Laws* and the Executive Committee recorded “Many delegates agreed that complex conflict of laws and legal compliance issues are broader than the provisions of Annex 9 — *Facilitation* and would need to be addressed. Following discussions, the Committee agreed that the actions presented in the Executive Summary of the paper should be considered and assessed by the relevant ICAO Panels and working groups.”

1.5 In order to further discuss data protection aspects specific to civil aviation, IATA in cooperation with ICAO organized the Data Protection & International Carriage by Air Seminar that took place in Montreal, 27 to 28 September 2023. ICAO agreed to study these questions through a multi-disciplinary group consisting of legal, privacy and facilitation experts from ICAO, States, airlines and international organizations. This group has yet to be constituted.

1.6 More recently, in November 2023, given the increasing risks to the operations of aircraft operators, IATA sent a letter to the ICAO Secretary General to bring attention on the complex situation the airline industry is finding itself in and inviting ICAO to issue a State Letter to highlight the PNR SARPs relating to the demonstration of compliance and dispute resolution.

2. DISCUSSION

2.1 A primary concern of the airline industry in relation to the PNR SARPs is that they are not solving the issue of aircraft operators being caught between conflicting border security requirements of one country, and the data protection laws of another country. This conflict of laws results in extremely challenging situations where aircraft operators are not complying with the laws of one or the other country and this, regardless of the PNR data transfer taking place or not. This comes with persistent risks to aircraft operators of being imposed with fines, operating rights being withdrawn and even imprisonment for the pilot in command, for reasons that are not of their making. The PNR SARPs currently do not provide the grounds for carriers to operate with predictability among some jurisdictions.

2.2 Only since the PNR SARPs have become applicable, IATA has had to engage with more than 25 different jurisdictions that have developed, or are in the process of developing, a legal basis to require transfers of PNR data, where some aircraft operators are unable to comply with those requirements because they must also comply with the data protection laws of the other jurisdiction in which they operate. This engagement by IATA, and at times by individual aircraft operators, with States to avoid negative

impacts on aircraft operations can take many forms. It ranges from reassuring States of the willingness of the airline industry to collaborate, explaining the requirements of data protection laws which otherwise inhibit their ability to transfer PNR data, raising awareness on the PNR SARPs, assisting States in initiating a bilateral dialogue to resolve their conflicts, to engaging at high level for avoiding that threats on aircraft operators materialize. Some of these actions seem more suitable to resolution by Contracting States, not by an international trade association and its members.

2.3 Contracting States and aircraft operators have gained experience with international transfers of PNR data. The situation is now mature enough for exploring new mechanisms for the consultations between States not to depend in large part on the steady involvement of the airline industry, and for developing additional guidance on how Contracting States should effectively engage in these bilateral consultations, address their conflicts of laws, and to demonstrate their compliance with the PNR SARPs in a timely and more effective manner.

3. **CONSIDERATIONS ON THE WAY FORWARD**

3.1 Recognizing that the international civil aviation sector would benefit from further studying the interactions of national data protection laws and civil aviation, the multi-disciplinary group presents a good opportunity for a continued dialogue to take place among a broad range of experts and making progress in addressing the challenge of lack of consistency between national data protection laws.

3.2 Through the proposed multi-disciplinary group or another facilitation working group (existing or new), additional tools for assisting States to resolve international transfers of PNR data could be discussed. For instance, the creation of a repository for easing the demonstration of the compliance among States with the PNR SARPs, procedures for fostering bilateral consultations, mitigating the risks for aircraft operators to be penalized for reasons out of their making, mechanisms for multi-lateral recognition of adequacy of States with the PNR SARPs, additional international legal tools, etc.

3.3 Collaterally, the PNR SARPs has been developed without any update to the accompanying guidance material found in [ICAO Doc 9944, *Guidelines on Passenger Name Record \(PNR\) Data*](#). This remains the First Edition published in 2010 which still reflects when the transfer of PNR data was a Recommended Practice in Annex 9. Much is to be gained in expediting the updating of this extensive reference document to assist States in developing their capability to collect, use, process and protect PNR data, and on the multiple facets of a PNR program. Collaterally, this update will foster an additional dialogue among States and with the airline industry with a view of overcoming the current challenges.

3.4 Lastly, the aviation industry is as well exploring the modernization of its distribution and to adopt modern retailing techniques. Through initiatives including One ID and Modern Airline Retailing, IATA is looking into modernizing the customer experience and transforming the decade-old standards, processes and technology related to airline distribution systems (refer to FALP/13-IP/7). With Offers and Orders, references residing potentially within multiple PNRs for the same passenger will be accessible through a single order reference with the potential benefits of increasing the quality of the data and of being shared directly from passengers to authorities, among others.

4. **RECOMMENDATIONS**

4.1 The Facilitation Panel is invited:

4.1.1 to take note of the information contained in this paper; and

4.1.2 to take into consideration the proposals it contains for the discussion on the way forward on the issue of the interaction of international carriage by air with data protection laws.

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