



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 1 August 2008**

**12360/08**

**LIMITE**

**CRIMORG 124  
AVIATION 162  
DATAPROTECT 55**

**COVER NOTE**

---

from : European Travel Agents' and Tour Operators' Associations  
to : Mr Pierre Sellal, Permanent Representative

---

No. prev. doc. : 10794/07 CRIMORG 110

---

Subject : Proposal for a Council Framework Decision on the use of Passenger Name  
Record (PNR) data for law enforcement purposes

---

Delegations will find attached a letter sent by the European Travel Agents' and Tour Operators' Associations to the Presidency regarding the above Commission proposal.

Dear Mr. the Ambassador,

Dear Ms. Rocheteau,

**Re: Proposal for a Framework Decision on the use of PNR for law enforcement purposes**

---

ECTAA, the European Travel Agents' and Tour Operators' Associations, counts among its membership the national associations of travel agents and tour operators of 25 Member States, the national associations of Croatia and Turkey, as well as of Norway and Switzerland. ECTAA represents some 80.000 European companies.

Since our Members are offering their services to EU citizens who wish to travel for business or leisure purposes. They may thus be involved, whether directly or indirectly, in the collection of passengers' PNR data. Therefore, based on the information at our disposal, among which the latest public Council documents, we would like to provide you with some comments on various issues discussed at the level of the Council in the framework of the procedure to adopt the Framework Decision on the use of PNR for law enforcement purposes

**1. Scope of the Proposal**

We strongly support the fact that PNR collection requirements exclusively fall on air carriers, which are defined as undertakings with a valid operating licence or equivalent.

As proposed by the European Commission, ECTAA considers that the proposal for a Framework Decision should only cover data for passengers on flight into and out of the EU. It is essential that it is not extended to intra-EU flights.

## **2. Collection of data element of Passenger Name Record**

In the Commission's original proposal, the PNR collection requirements are only to the extent that these are collected by carriers (Article 5(2) of the proposal). ECTAA believes that this is particularly pertinent since carriers may in some instances rely on data collected in their business partner's reservation systems, such as for instance tour operator's reservation systems, which may not offer full functionalities to collect all the PNR data listed in the proposed Framework Decision.

Following discussions at Council level, it appears that air carriers would have to make available the PNR data to the extent that they are collected or *otherwise known by the air carriers*. Data would notably be considered as being otherwise known by the air carrier if *it is requested in the course of business of the air carrier but not necessarily held in such system as the air carriers' reservation system, departure control system and CRSs*.

However, this wording is problematic. It is rather vague and could therefore leave room for interpretation by national competent authorities and courts.

Therefore, ECTAA considers that the text should specify that data should be provided only to the extent that they are captured and retained electronically by the air carrier in its normal course of business. For clarity, there should be an explanation that where data is not routinely captured electronically, it does not mean that the carrier will have to develop processes to capture such data.

## **3. Data protection**

ECTAA supports the efforts of the Council to ensure that the passenger's personal data will be fully protected at all times of its processing. Indeed, it is fundamental that data will not be used other than for border purposes and will be held securely and for a duly limited period of time.

#### 4. Sanctions

Article 10 of the proposed Framework Decision would provide that Member States shall adopt sanctions against air carriers and intermediaries, with regard to PNR data collected by them, if they do not transmit all data required under the Framework Decision.

According to the proposal, the obligation to make PNR data available lies exclusively on the air carrier. The notion of intermediaries and their role is not clearly defined in the proposal<sup>1</sup>, with the consequence that there could be confusion between intermediaries under the proposed Framework Decision and travel agents, who usually act as intermediaries for the booking of air tickets. In our opinion, travel agents are not intermediaries in the sense of the proposed Framework Decision. However, the text is not precise enough and could lead to incorrect interpretation by national competent authorities or courts. Therefore, ECTAA considers that in Article 10, sanctions should only be applied to air carriers.

Imposing sanctions for not transmitting all data required under the Framework Directive is in our opinion in contradiction with Article 5, which provides that air carriers should only provide PNR data to the extent that they are collected or otherwise known.

#### 5. Other issues

ECTAA would also like to make the following general comments in respect of the proposed Framework Decision:

- This proposal will have significant technical, operational and financial consequences for carriers. Inevitably that cost will be passed on by the carriers to the end user, the passenger.

---

<sup>1</sup> In its opinion of 27 December 2007 on the proposed Framework Decision (O.J., C110, 01.05.2008, p.1, see point 69), the European Data Protection Supervisor highlighted that no indication is given in the proposal with regard to the quality of intermediaries and that their role as data controllers or processors is not specified either. He thus recommends that no intermediaries should be involved in the processing of passenger data, unless their qualify and tasks are strictly specified.

- It is essential that prior to the implementation of this Framework Decision, Member States agree on a standard format for the data. It would not be acceptable for the governments of the different Member States to require the data in different formats. This would require additional unnecessary work. The proposed Framework Decision should address the matter in a specific Article. Further, there should be a choice of transmission methods so that carriers are not forced into using commercial transmission services but that which is best suited to their specific constraints and is compatible with existing systems.
- Data is currently provided to the US and other countries shortly after the flight departs. To require the data to be provided 24 hours in advance of departure and immediately after flight closure is an unnecessary duplication. The decision to travel can be a last minute one; indeed, passengers do not commit to travelling until physically checked in for a flight. Charter carriers in particular rarely receive such information in advance of 24 hours. Whilst carriers might have the facility for the US to collect, for example, passport information at check-in, that facility does not exist for collection in advance of check-in. To put in place an advance system for charter carriers would be costly and require considerable time as the current systems used by tour operators do not lend themselves to this.
- One of the 19 PNR data elements listed in the Annex to the proposal is the address and contact information of the passenger, including his telephone number and e-mail address. ECTAA understands the need for identification of passengers but have concerns that if the passenger booked his flight through a travel agent, his contact details, which is sensitive commercial data, could be misused by carriers for commercial purposes, to the detriment of the travel agent. Therefore, ECTAA considers that when a booking is processed through a travel agent, it should be sufficient to mention the contact details of the travel agent who processed the booking, including his telephone and e-mail address.

- The requirement to collect additional data elements relating to unaccompanied minors listed in the Annex, which are currently not collected, is onerous.

We trust that these comments will be useful and we remain at your disposal for any further information that you may need.

With best regards,

Michel de Blust  
*Secretary General*

---