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NOTE

From : General Secretariat
To : COREPER
No Prop. Cion : 12385/04 AVIATION 163 JAI 318 RELEX 384 USA 83 TELECOM 138
Subject: Preparation of the 35th ICAO Assembly – An International Framework for the Transfer of Passenger Name Record (PNR) Data
- Confirmation of text
- Decision on the use of written procedure

Following the request by Member States, the Commission services prepared a draft for a Working Paper on the issue of Passenger Name Record (PNR) to be submitted by the Netherlands on behalf of the European Community and its Member States to the 35th ICAO Assembly, which will be held from 28 September – 8 October 2004 in Montreal.

During the presentation of this document at the meeting of the Aviation Working Party on 10 September 2004, the Commission underlined that the text was largely inspired by former Community documents on this issue.

In the same meeting, delegations were invited to present their comments on this text, if any, before Monday evening 13 September; the Council General Secretariat did not receive any such comments before the deadline set.

However, at a later stage the **DELETED** delegation presented some comments, as a result of which – and in agreement with the Commission services – the text of the Working Paper has been slightly modified. The new, modified text is set out in the annex to this note, with the changes highlighted in bold (cfr pages 7 + 8 of the annex).

COREPER could now confirm this text so that the Working Paper can be sent to ICAO.

Moreover, since the Assembly will start in less than two weeks, and given the absence of any Council sessions in the days following the meeting of COREPER, it seems appropriate to take a decision as referred to in Article 19(7)(e) of the Council rules of procedure – namely to make use of the written procedure – in order to be able to submit this document in time to ICAO.

In these circumstances, COREPER is invited:

- to confirm the text of the Working Paper as presented in the annex to this note,
- to agree on the use of the written procedure to obtain Council approval for submitting this Working Paper to ICAO (deadline 20 September 2004 at 17.00).

COMMISSION STAFF WORKING PAPER

Preparation of the 35th ICAO Assembly - An International Framework for the Transfer of Passenger Name Record (PNR) Data

In the light of initiatives by several countries (United States, Canada, Australia, Mexico) obliging airlines to make PNR data available for the purposes of improving aviation security and facilitating border controls (e.g., combating terrorism, terrorism-related serious crimes with international implications), the European Community and its Member States invited¹ the ICAO Facilitation Division to consider the development of ICAO standards and recommended practices in this field, taking into account aviation security, border control and personal data protection requirements.

Following the recommendations made by the Twelfth Session of the Facilitation Division (Cairo, 22nd March to 2nd April 2004) and their review by the Air Transport Committee and the ICAO Council, a Study Group is to be established by ICAO to develop the guidance material on Passenger Name Record (PNR) data for submission early in 2005.

In view of the forthcoming 35th Session of the ICAO Assembly (28 September to 8 October 2004), the attached document is aimed at presenting to the Assembly the approach of the Community and its Member States, highlighting that guidelines on uniform practices for processing of PNR data should be established in a proportionate manner and recommending that the ICAO work address a range of different aspects concerning categories of data, data processing requirements, data transfer requirements and data structure.

Hence the Council is invited to transmit through the Presidency the attached document inviting the ICAO Assembly to decide that work be carried out on the basis indicated therein.

¹ doc. 7236/04 AVIATION 62 JAI 74 RELEX 94 USA 24 TELECOM 51

35TH SESSION OF THE ICAO ASSEMBLY

**EXECUTIVE COMMITTEE
AND ECONOMIC COMMISSION**

- Agenda Item 14: Aviation security**
Agenda Item 14.1: Developments since the 33rd Session of the Assembly
Agenda Item 29: Facilitation

**AN INTERNATIONAL FRAMEWORK FOR THE TRANSFER OF
PASSENGER NAME RECORD (PNR) DATA**

(Presented by the Netherlands on behalf of the European Community and its Member States)

SUMMARY

Following the recommendations made by the Twelfth Session of the Facilitation Division (FAL/12) and their review by the Air Transport Committee and the Council, this paper presents to the Assembly the position of the European Community and its Member States on the development of ICAO standards and recommended practices concerning the transfer of PNR data for the purposes of improving aviation security and facilitating border controls, taking into account aviation security, border control and personal data protection requirements.

It is recommended that the ICAO work addresses a range of different aspects concerning categories of data, data processing requirements, data transfer requirements and data structure.

Action by the Assembly is in Section 3.

1. BACKGROUND

- 1.1 In the light of initiatives by several ICAO member States obliging airlines to make PNR data available for the purposes of improving aviation security and facilitating border controls (combating terrorism and terrorism-related serious crimes with international implications), the European Community and its Member States invited the ICAO Facilitation Division to consider the development of ICAO standards and recommended practices in this field, taking into account aviation security, border control and personal data protection requirements.
- 1.2 The submission by the European Community and its Member States (FAL/12-WP/75), reproduced in Annex, addressed the following aspects:
- the scope of data that may be used for aviation security and border control purposes;
 - the practices that may be employed for the collection, processing, storage and transfer of such data;
 - the technical implications in respect of the systems employed for the capture, processing, storage, and transfer of such data.

It further invited action as regards the development of ICAO standards and recommended practices in this field in a proportionate manner.

- 1.3 Following the recommendations made by the Twelfth Session of the Facilitation Division (FAL/12) and their review by the Air Transport Committee and the Council, a Study Group is to be established to develop the guidance material on Passenger Name Record (PNR) data for submission early in 2005.

2. PROPOSED WORK

- 2.1 The European Community and its Member States reiterate their support for the expeditious development of “ICAO guidelines on uniform practices for processing of air passenger data in a proportionate manner, including the collection, use, storage, and transfer of such data for law enforcement requirements (combating terrorism and terrorism-related serious crimes with international implications), as well as for the purpose of enhancing aviation security and facilitating compliance with legal requirements on border control (in particular by bringing about material facilitation benefits at airports), while providing adequate protection for passengers’ personal data. In addition, an international standard **of data requirements and procedures** should be designed, [...] in order to remove technical burdens that may impair the smooth implementation of those uniform practices. An ICAO standard in this area would also be of considerable benefit to industry in assisting them to design and configure their systems according to a single model **of data requirements and procedures**, rather than being confronted with different **models** for different countries, which would be far more costly”(see Annex, point 1.5).
- 2.2 Taking into account aviation security, border control and personal data protection requirements, it is recommended that the ICAO work addresses a range of different aspects concerning categories of data, data processing requirements, data transfer requirements and data structure, as set out in Annex, Sections 2 to 5.

3. ACTION BY THE ASSEMBLY

The Assembly is invited to decide:

- a) that guidelines on uniform practices for processing of PNR data should be established in a proportionate manner, including the collection, use, storage, and transfer of such data for law enforcement purposes, as well as for the purpose of enhancing aviation security and facilitating compliance with legal requirements on border control (in particular by bringing about material facilitation benefits at airports), while providing adequate protection for passengers' personal data.
- b) that an international standard **of data requirements and procedures** should be developed to facilitate the smooth implementation of those uniform practices [...].

This annex reproduces the Working Paper presented by the European Community and its Member States to the Twelfth Session of the Facilitation Division (Cairo, Egypt, 22 March to 2 April 2004) on

**AN INTERNATIONAL FRAMEWORK FOR THE TRANSFER OF
PASSENGER NAME RECORD (PNR) DATA**

1. INTRODUCTION

- 1.1 As a measure to improve aviation security and to expedite customs and immigration formalities at airports several countries (United States, Canada, Australia) have passed legislation which requires that airline passenger data contained in the Passenger Name Record (PNR) are made available to their authorities prior to arrival.
- 1.2 It is anticipated that more countries will follow suit. Law enforcement authorities around the world are increasingly requesting access to passenger data to assist them in their efforts to protect their national borders and civil aviation, notably against the threat of terrorism, which in the aftermath of the tragic events of 11th September 2001 has become a top priority.
- 1.3 PNR data are introduced into the system in the course of the reservation process by an airline or an agent, or by the passenger when booking direct via the Internet.
- 1.4 The European Community and its Member States consider that it would be in the interest of public authorities and airlines to seek the development of uniform practices and standards at international level in the framework of ICAO.

- 1.5 It is proposed that ICAO establishes guidelines on uniform practices for processing of air passenger data in a proportionate manner, including the collection, use, storage, and transfer of such data for law enforcement requirements (e.g. combating terrorism, terrorism-related serious crimes with international implications), as well as for the purpose of enhancing aviation security and facilitating compliance with legal requirements on border control (in particular by bringing about material facilitation benefits at airports), while providing adequate protection for passengers' personal data. In addition, an international standard should be designed, including the appropriate configuration of the PNR system, in order to remove technical burdens that may impair the smooth implementation of those uniform practices. An ICAO standard in this area would also be of considerable benefit to industry in assisting them to design and configure their systems according to a single model, rather than being confronted with different systems for different countries, which would be far more costly.
- 1.6 Taking into account aviation security, border control and personal data protection requirements, it is recommended that the ICAO work addresses a range of different aspects set out below.

2. CATEGORIES OF DATA

- 2.1 On the basis of existing PNR data elements, the maximum number and scope of data that is strictly necessary for law enforcement purposes and enhancing aviation security (to the extent that they actually appear in an individual passenger name record) should be considered. The list of data to be transferred should be proportionate and not excessive.
- 2.2 PNR data of a particular sensitive character may need to be given special protection under applicable data protection laws. In such a case, the balance between the rights of passengers not to disclose such data and the interest of public authorities to receive the data for law enforcement purposes and enhancing aviation security should be taken into account.
- 2.3 The protection of air carriers and other economic operators involved in the processing of PNR data against liability for the accuracy or authenticity of PNR data, or omissions, over which they do not have any control, should be considered.

3 DATA PROCESSING REQUIREMENTS

- 3.1 A number of issues with respect to the processing of PNR data transfers should be explored:
- a) **Transparency:** the timely availability of airline passenger information notices on how, for what purposes, and to whom the data is being made available, as well as on passengers' rights of access to their data records;
 - b) **Purpose limitation:** the purpose for which the data is being made available should be clearly defined (e.g. combating terrorism and terrorism-related crimes);
 - c) **Storage:** PNR data should be stored for no longer than is strictly necessary for the stated purposes, especially with respect to the data of legitimate passengers;
 - d) **Onward Transfer:** safeguards for limiting the onward transfer of PNR data to parties other than the primary recipient;
 - e) **Rights of passengers:** appropriate mechanisms through which passengers are able to access their own PNR data and rectify those data where appropriate;

- f) **Redress Mechanisms:** access for passengers to independent complaint and dispute settlement mechanisms for disputes arising from the processing of their PNR data by public authorities;
- g) **Additional Safeguards:** Appropriate control mechanisms to ensure that any safeguards are respected, such as verifiable guarantees on the correct processing of the PNR data. For example, control mechanisms could include regular mutual system audits, random ex-post controls, and the possibility of systems review, including by ICAO, if appropriate.

4 DATA TRANSFER REQUIREMENTS

4.1 A number of aspects relating to the conditions in which PNR data is transferred should be considered, notably:

- a) **Type of access:** technical and legal consideration of the most appropriate system for the transfer (“push”) or direct access to (“pull”) PNR data. The cost-effectiveness of the system used (i.e. any costs that may have to be borne by the airlines), who bears the costs, and compliance with the applicable data protection rules and the general principles of international law, need also to be taken into account;
- b) **Time of transfer:** the number and frequency of transfers and the appropriate time of transfer of PNR;
- c) **Filtering:** appropriate technological measures to observe the limitations in respect of the PNR data elements requested;
- d) **Security measures:** appropriate technical and organisational measures to ensure that the processing of PNR data for aviation security and border control purposes is carried out in accordance with the appropriate safeguards, notably with respect to the security, integrity and confidentiality of the PNR data, as well as appropriate penalties for misuse of the data.

5 DATA STRUCTURE

- 5.1 The extent to which the current structure of PNR may need to be modified to facilitate PNR data transfer requirements should be assessed, notably with respect to the use of open data fields. A number of options could be considered:
- a) harmonising the structure of PNR across the industry (e.g. same total number and denomination of fields);
 - b) modifying the PNR structure where appropriate (e.g. creating new, specific fields so as to minimise the information that is entered into open fields);
 - c) providing clear guidelines on how to input PNR data (e.g. what information may or may not be included in each field).

6 ACTION BY THE DIVISION

- 6.1 In the light of initiatives by several ICAO member States obliging airlines to make PNR data available for the purposes of improving aviation security and facilitating border controls, the European Community and its Member States invite the ICAO Facilitation Division to consider the development of ICAO standards and recommended practices in this field, taking into account aviation security, border control and personal data protection requirements.
- 6.2 More specifically, the Division is invited to establish guidelines on uniform practices for processing of PNR data in a proportionate manner, including the collection, use, storage, and transfer of such data for law enforcement purposes, as well as for the purpose of enhancing aviation security and facilitating compliance with legal requirements on border control (in particular by bringing about material facilitation benefits at airports), while providing adequate protection for passengers' personal data.
- 6.3 In addition, the Division is invited to consider the development of an international standard to remove technical burdens that may impair the smooth implementation of those unifor