

Associations Internationales sans but lucratif

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**Common position of ECTAA and GEBTA
on the proposal for a Directive
on the use of PNR against terrorist offences and serious crime**

ECTAA regroups the national associations of travel agents and tour operators in 29 European countries, of which 25 are Member States of the European Union. GEBTA represents 7 guilds and more than 300 travel management companies throughout the European Union. ECTAA and GEBTA together represent 80.000 companies.

Travel agents and tour operators are involved in the booking and sale of air travel services, which would be subject to the Directive on the use of PNR against terrorist offenses and serious crime.

Having examined with great interest the Commission's proposal for a Directive on the use of Passenger Name Record (PNR) for the prevention, detection, investigation and prosecution of terrorist offences and serious crime (COM (2011) 32), we would like to highlight the following issues:

1. We welcome that the proposed Directive provides that carriers transfer PNR data "*to the extent that such data are already collected by them*" (Article 6 (1)). Any mandatory requirement to collect certain data must be avoided, considering that air carriers are private entities collecting data in the course of their business. Moreover carriers may in some instances rely on data collected in their business partners' reservation systems, such as for instance tour operators' reservation systems, which may not offer full functionalities to collect all the PNR data listed in the annex of the proposed Directive. **ECTAA and GEBTA believe that PNR 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.**

We raise concerns in this respect about wording in the Directive proposal describing the list of data as requirements, whereas the satisfaction of any PNR demand should depend on whether the carrier has collected the data. This wording could lead to confusion, notably in Recitals 14, 15, 29, Article 2(f), Article 6(1) ("*the obligation to transfer the PNR data of all passengers*") and Article 6(4). We suggest amending any wording providing an absolute obligation to transfer specified PNR data and to specify in the definition of PNR data that under this Directive, PNR data is limited to data captured and retained electronically by an air carrier in its normal course of business.

We also suggest adding an explanation that where data is not routinely captured electronically, carriers will not have to develop processes to capture such data.

2. **We strongly support the fact that the obligation to transfer the PNR data falls on air carriers**, which are defined as undertakings with a valid operating licence or

equivalent. Indeed, air carriers are the controllers of PNR data, as acknowledged by the Article 29 Data Protection Working Party in its opinion 2/2007.

During the preparatory work on the proposal for a Framework Directive on a similar use of PNR, it was considered to add in the carrier definition that the obligations shall be incumbent upon the air carrier also in the event that it designates an intermediary. We would support the reintroduction of such wording.

3. The obligation to inform passengers on the use of their PNR should only fall on air carriers. Since air carriers are the data controllers, they should bear the information obligation and as the case may be organise its implementation with their agents. Therefore, **any reference to travel agencies and ticket sellers should be deleted from the proposal, and notably from Article 11(5) on information obligations.**
4. ECTAA and GEBTA consider that **the requirement to inform passengers on the use of PNR at the time of booking and at the time of purchase is an unnecessary duplication.** It would put an unjustified workload on the industry, whereas passengers are already flooded with information and would gain from being effectively informed only once. The time of booking is an adequate moment to inform the passenger. Differently, there are many cases, notably in business travel, where travel agents and passengers are not in contact at the moment when the agent is carrying the technical procedures to issue the ticket, which is the actual moment of purchase. Establishing an obligation to inform again passengers at the moment of purchase would oblige agents to modify significantly their working processes. **We thus recommend that the information be provided once at the time of booking.**
5. **The proposal only covers data for passengers on flight into and out of the EU. It is essential that it is not extended to intra-EU flights.** Any extension would seriously aggravate the work burden for the industry. Making such extension optional for Member States or with a choice of routes would also cause very serious difficulties, because it would create a multitude of different situations, entailing difficulties to know which scheme applies to which flights.
6. **Requiring the provision of PNR data 48 to 24 hours in advance of departure and immediately after flight closure is an unnecessary duplication.** For a return flight with 2 sectors per journey, this double requirement could oblige carriers to push the data 8 times.

ECTAA and GEBTA would thus recommend that PNR only be transmitted once, 24 hours before departure. This would have the advantage of enabling carriers to push the data once per ticket, instead of several times per sector.

Moreover, we note that Article 6.4 of the proposal provides a possibility for earlier transfer of PNR data where it "*is necessary to assist to a specific and actual threat*". We consider that the wording of this condition is too loose. It could result in carriers being frequently asked to provide the data earlier, which would cause serious disruptions in their activity flow. **If an exception for earlier access is really necessary, it should be limited as much as possible.**

7. **It is essential that Member States agree before the implementation of the Directive on a standard format and transmission protocol.** Any situation where Member States could have different requirements would entail unnecessary additional work for the industry. We deplore that in the proposal, there is no obligation or time limit for the Member States to adopt a format and protocol through the Committee procedure. Further, should Member States agree on several formats and protocols, **the choice**

should be left to carriers, so that they are not forced into using systems which are not well suited to their specific constraints or incompatible with existing systems.

We underline that some third countries also require carriers to transfer PNR data. Thus, **the format and protocol should be common to all PNR transfers.**

8. We welcome the explanation of the European Commission that “**PNR data are different from and should not be confused with Advance Passenger Information (API)**. *API data are the biographical information taken from the machine-readable part of the passport*” (p. 6-7 of the explanatory note). We also consider that API data must be verified information taken at check-in from the machine-readable part of the passport, in order to prevent the risk of mistake or changes before departure. We regret in this regard that the list of PNR data in the Annex of the proposal includes an item (18) “*Any Advance Passenger Information (API) collected*”. Firstly, carriers do not collect data in advance from the machine-readable part of the passport. Secondly, any information collected otherwise bears the risk of mistake or changes before departure. This raises concerns in regard of the use of API for official identification purposes. **Thus item 18 of the list of PNR data should be deleted.**
9. **The requirement to collect additional data elements relating to unaccompanied minors listed in the Annex, which are currently not collected, is onerous.**
10. Another 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 and GEBTA understand 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 for commercial purposes, to the detriment of the travel agent.**

Therefore, we consider 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.
11. ECTAA and GEBTA are concerned at the data protection implications and require assurance that **PNR data will not be used other than fighting against terrorist offenses and serious crime and will be held securely and for a duly limited period of time.**
12. **We welcome that the proposal includes a transitional period, in order to give time to the travel industry to adapt to the new requirements.** During the preparatory work on the proposal for a Framework Directive on a similar use of PNR, a transitional period of 6 years was considered. We recommend applying a transitional period of this length, rather than the four years provided in the current proposal.
13. The Directive proposal will in any case have significant technical, operational and financial consequences for the travel industry. Inevitably, **cost will be passed on to the end user, the passenger.**

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