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Cc:

European Commission, DG JUST
Unit C3

European Data Protection
Supervisor

Dear Mr. Pérez Ruiz,

Dear Ms. Sánchez Grau,

Dear Ms. España Martí,

As a coalition of European associations representing the travel and tourism industry, we are writing to you to express our concern about the imminent implementation of Decree 933/2021, scheduled for 1 October 2024.

We would like to emphasise that we fully understand the importance of the fight against organised crime and terrorism. However, in its current form, the Decree goes much further than necessary and raises a wide range of practical and legal issues for both our industry and our customers.

General considerations and concerns

Royal Decree 933/2021 is disproportionate and unnecessary in relation to the purpose of the data collection, as it goes beyond the fight against terrorism and organised crime.

Travellers will be reluctant to choose Spanish destinations in the future if such an extensive collection of data is in place and will prefer less burdensome alternatives.

The Decree will impose significant and unnecessary additional administrative burden and costs for companies (e.g. hotels, travel agents, tour operators, etc.) de facto increasing the price of holidays in a highly competitive market. It raises the question of how tourism business operators, especially micro-enterprises, will be able to cope with the legal requirements.

It will lead to unnecessary duplication of data collection and processing by travel businesses when the obligation already applies to Spanish hotels and car rental companies.

It will not provide the Spanish authorities with the required personal and transactional information when visitors to Spain organise their own trips without an intermediary or a tour operator. In addition to the disproportionate administrative burden on travel companies, this will lead to a distortion of competition between direct and indirect bookings.

Legal considerations

You will find in annex a detailed legal analysis of our concerns with the Royal Decree. In summary, we are concerned with the following:

To date, no tour operator or tourism authority outside of Spain has received information on how the requested data will be sent, processed and transferred to the Spanish authorities in practice.

As a result, tourism business operators will not be able to comply with the GDPR's information requirements and therefore will not be able to prepare a DPIA (Data Protection Impact Assessment) as a basis for the obligations of the Regulation (art. 35).

Companies risk being fined and sanctioned if the national authorities consider that the Decree's requirement for mandatory (double) collection of personal data is in breach of the GDPR.

Spanish companies also mentioned that this Royal Decree enters in contradiction with Payment Regulations: The obligation to collect and report payment-related data in accommodation transactions appears to contradict the existing Spanish regulations on payment services, as set out in Royal Decree-Law 19/2018, which transposes the PSD2 Directive.

All the above raise the following questions:

- How will the Spanish authorities ensure that the requested data is not collected by several obliged parties to avoid unnecessary processing and disclosure of personal data among several data controllers?
- When can the travel companies be expected to receive information about how the requested data is processed, stored and deleted?
- How are the rights of the data subject secured in relation to data portability, objection, rectification and deletion?

Practical challenges

Most of the requested data required by the Decree are not collected by the tourism business operators in their booking systems. Consequently, they do not have systems in place to collect and transmit the data and will not be able to develop such systems by 1 October 2024.

At the time of writing, the platform for collecting the data is only available in Spanish, although the decree will apply mainly to non-Spanish users (foreign travel companies) and the travellers' data will have to be processed manually. Companies, especially micro-enterprises will not be able to comply with the proposed obligations.

For instance, for hotels, it would be a burden to process the data of big groups of people (e.g. congress of 500 people) given the detail of the information that is needed. Moreover, the lack of automatic means to process the data is a real challenge (e.g. Japanese or Chinese clients who provide data in their respective languages). In addition, many consumers do not want to provide certain personal data to avoid later marketing communications. It is also unclear how obligations would be fulfilled in places where the reception does not operate 24 hours a day. Finally, since cancellations of reservations are quite frequent, companies would lose time collecting the data for no reason. For all hospitality establishments, composition of groups change ad-hoc, even on day of arrival. For providers, especially the small ones, it is often technically (connectivity and equipment in rural areas) impossible to manage¹.

Will the Spanish authorities provide access to systems that are compatible with tourism business operators own booking systems?

The Spanish registration system for tourism business operators and the Spanish reporting system for personal data and transaction data will only be available in Spanish. Will translation be provided?

Recommendations, possible solutions and alternatives

We therefore respectfully request that the Spanish authorities consider the following options:

- 1) Revoke the Decree, or
- 2) Modify the procedure for reporting personal and transactional data; and/or
- 3) Simplify the scope of reporting and postpone the Decree.
 - An **alternative solution** to the Decree could be introducing a simplified and digital self-service system for the travellers in the same way as applying for **ESTA** (Electronic System for Travel Authorization) for USA or similar to the **Greek PLF** (Passenger Locator Form) which all travellers themselves had to complete before entering into Greece during the pandemic.
 - Finally, the Decree, the registration system and the reporting system should be **presented in English** and accompanied with guidelines and instructions regarding the legal and practical implementation and use.
 - In any case, the implementation of a new reporting system should be postponed until all the issues we have raised have been resolved, reporting is simplified and is available in other languages.

The Spanish authorities and the travel industry have a mutual interest in promoting, maintaining and even increasing tourism to Spain. And we sincerely hope that the relevant authorities will understand and respond to the major concerns outlined above.

Yours sincerely,

¹ It is to note that according to Eurostat there were, in 2022, more than 25 000 micro-enterprises in the accommodation sector in Spain.

Eric Drésin
Secretary General, ECTAA

ECTAA represents the interests of 80,000 travel agents and tour operators in Europe, which provide consultancy and sell transport, accommodation, leisure and other tourism services as well as combined products to leisure and business customers.

Ros Pritchard
Secretary General, EFCO&HPA

EFCO&HPA is the representative body of the campsite, holiday and caravan parks industry at the European level.

Tim Fairhurst
Director General, ETOA

ETOA is the trade association for tour operators and suppliers in European destinations, from global brands to local independent businesses. The membership includes tour and online operators, intermediaries and wholesalers, European tourist boards, hotels, attractions, technology companies and other tourism and business service providers.

Marie Audren
Director General, HOTREC

HOTREC is the umbrella association of hotels, restaurants, bars, and cafés in Europe. HOTREC represents 47 members from 36 countries, supporting 2 million hospitality businesses where 9 out of 10 are micro-enterprises. HOTREC acts as a platform of expertise and ensures a business-friendly and competitive environment while driving sustainable and innovative growth.

Klaus Ehrlich
General Secretary, RuralTour

The European Federation of Rural Tourism - RURALTOUR is a professional tourism trade organisation representing a sector with an estimate of 500.000 micro-and nano enterprises and about 5-6,5 million bed places. It includes 28 professional and trade organisations from 25 countries of geographic Europe. The represented services include hospitality from rural Bed & Breakfast and self-catering, STR in private homes or farms up to small family-run rural hotels or guesthouses, rural gastronomy, and active tourism services.

Annex 1: Legal analysis of Royal Decree 933/2021

The [Royal Decree 933/2021](#) came into force in Spain on 2 January 2023 with a 6-month grace period ending on 2 June 2023. After several discussions, this decree will now apply from 1 October 2024.

According to this Decree, accommodation and car rental services performed in Spain and the companies (e.g.: Tour operators, travel agents, booking platforms) booking these services, irrespective of their establishment, will need to share a broad list of travellers' data with the Spanish authorities, directly in case of direct bookings or, indirectly, through the incoming travel agencies. In both cases the Spanish authorities will have the data of our national travellers.

The businesses under the scope of the Royal Decree will need to collect more than 30 different personal and transaction data on travellers², irrespective of their age. The Decree indeed provides that data are collected directly from all travellers over 14 and via their accompanying persons for travellers under 14.

Moreover, the purpose of collection, according to the Royal Decree, in its preamble, is to fight against terrorism and organised crime. However, in practice, Article 7.1 of the Decree indicates that these data will be processed and accessed for reasons entering within the mission of the secretary of State of security. Therefore, in our opinion, the databases created will be used for a much wider (yet vague) purpose and could be applied to common offences. This lack of precise purpose for this data collection will also be difficult to justify when informing travellers on the way their personal data will be processed, questioning the legality of such travel contract with the transparency obligations under the GDPR.

As such, we are concerned that this Decree is in breach with the EU data protection legal framework, in particular:

- The purpose laid down in article 7.1 of the decree seems too vague and too far reaching to be considered as *explicit* as required by article 4.1(b) in Directive (EU) 2016/680 and the corresponding article 5.1(b) in Regulation (EU) 2016/679.
- The variety and far-reaching amount of data collected, applicable even to minors is clearly excessive in relation to the vague purpose laid down in article 7.1 of the decree.

² Data that needs to be shared includes:

- Traveller Data: (i) name; (ii) surname; (iii) second surname; (iv) gender; (v) ID number; (vi) document support number; (vii) type of document (national ID, passport, foreigner ID); (viii) nationality; (ix) date of birth; (x) place of habitual residence, including full address, region (localidad) and country; (xi) landline number; (xii) mobile phone number; (xiii) email address; (xiv) number of travellers; and (xv) kinship relationship between travellers (in the case that someone is a minor), (xvi) GPS data.
- Transaction data: (i) contract data, including reference number, date and signatures; (ii) contract execution data, including date and hour of entering and exiting; (iii) property data, including full address, number of rooms and internet connection (yes/no); and (iv) payment data, including type (cash, credit card, etc.), identification of the means of payment (type of card and number, etc.), holder of the means of payment, expiration date of the card, date of payment, paid amounts and identification of the transaction/authorization.

- In our opinion, many of the required data do not appear to have any direct *relevance* to the achievement of the decree's stated purpose. In our opinion, that seems to infringe art 4.1(c) in Directive (EU) 2016/680 and the principle of data minimization in article 5.1(c) in Regulation (EU) 2016/679.
- It is also questionable whether a data retention period of 3 years, in particular when collected on minors as well is considered *necessary* as provided in art 4.1(e) Directive (EU) 2016/680 and the corresponding article 5.1(e) in Regulation (EU) 2016/679.
- This wide and automatic collection of all travellers taking accommodation in Spain also raises the question of the legality of the Decree in the light of the ECJ [Case C-817/19 of 21 June 2022](#). In this case where Member States demanded to get PNR data from airlines on all intra-EU flights, the ECJ ruled that a wide personal data collection is only justified in case of an apparent terrorist threat, has to be time-limited, and otherwise such policy must be applied in a tailored way to certain flight routes for which there are relevant indications.

For these reasons, we express our serious concerns regarding the implications of the Royal Decree, as described in this letter. We believe that, in its current form, it raises significant legal issues from a data protection perspective. Therefore, we respectfully request the guidance of the AEPD on the legality of the Decree and how to ensure that sending/receiving travellers to Spain remains compliant with data protection laws.

While we strongly reject the Royal Decree as it stands, we remain committed to finding a workable solution and are open to discussing interpretations or adjustments that could address our concerns. We welcome the opportunity to engage in further dialogue to reach a resolution that upholds the principles of data protection and supports continued travel to Spain.

Kind regards,

The Coalition