

Impact of the Commission's proposed Regulation on data protection with respect to the airline processes

On 25 January 2012, the European Commission published its proposals for a Regulation and a Directive on data protection. The Directive would apply to the processing of personal data by competent authorities in the sphere of criminal justice and security. The Regulation would apply to the processing of personal data in all other spheres.

We have reviewed the proposals and formed some initial views on their impact on the aviation industry. Overall we are positive regarding the harmonization of data protection within the European Union, but disappointed that the proposals are prescriptive and do not meet to the standards we had encouraged. We are particularly aware of the following concerns, unique to the aviation industry:

- the fight against terrorism, the prevention of fraud and serious crime;
- the practical implications of running a global operation on a 24/7 basis;
- the extensive (and partly shared) airline reservations and departure control systems;
- the international cooperation between airlines by partnerships, inter-lining (i.e. one ticket cutting across several airlines) and code-sharing (i.e. semi-integrated operations) and
- widespread use of third parties, like travel agents, call centres, ground handling and luggage companies where extensive amounts of personal data must be shared.

The items above show a clear need for a more open structure of data processing by the airline industry, but within the boundaries of the proposed regulation. Items as explicit consent and the right to be forgotten do not fit within the standard operation of airlines who process passenger data.

As airlines receive passenger information from third parties like travel agents and other airlines to fulfil the travel requests on their flights, it is very difficult to obtain an explicit consent for the processing and or disclosure of the data as there is no direct contact with the individual involved. Same is applicable to the right to be forgotten. At the moment a passenger travelled on a number of airlines, the data must be stored for financial settlements between the airlines involved. Regarding the obligation to remove a passenger's personal data on request it is almost be impossible to determine and reach all parties involved to make sure the personal data is really deleted.

Another major concern in the airline industry is the storage and sharing of passenger data for fraud prevention and the watchlist unruly passengers. As the level of credit card fraud is continuously increasing and also the number of incidents on board aircrafts is rising, there is a clear need to share this information between the airlines. The discovery of fraud by one airline will have an impact on other airlines in case the information is not shared. This is also applicable regarding unruly passengers. Once stopped on one airline, he/she will try to get on board any other airline on the same route.

Regarding the data breach notification we face the problem that in our processes there are numerous third parties in and outside the EU involved. In most cases there is not even a clear distinction between data controllers and data processors, as they all have their own responsibility in

the passenger transportation process. The same is valid regarding the use of a Privacy Impact Assessment as it is not clear who will be (sub)processing the data next to, or on behalf of the initial collector (processor). In the process there can be any 'other' airline or handling company involved.

Last but not least the disclosure of passenger information to governments for which we ask the European Commission to consider a specific paragraph (delegated act) for passenger data disclosure in the proposed Data Protection Regulation of January 25, 2012. This would help both the airlines, member states and the European Commission as it will indicate a standard framework within disclosure of passenger related information would be acceptable in respect to the protection of personal data.

A detailed list of all airline comments regarding the proposed Regulation will be available at the Conference.