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INFORMATION PAPER

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FACILITATION PANEL (FALP)

SIXTH MEETING

Montréal, 10 to 14 May 2010

Agenda Item 3: Report of the API/PNR Working Group

SUPPORTING DOCUMENTS: REVISION OF CIRCULAR 309

(Presented by the Rapporteur)

1. INTRODUCTION

1.1 Please find attached the following documents that are relevant to FALP/6-WP/5, Report of the Advance Passenger Information/Passenger Name Record Working Group:

1.1.1 Appendix A: 15Apr2010.2nd Draft revision.Circular309, that provides details of comments received on the 1st draft revision of the Circular; and,

1.1.2 Appendix B: A table that traces the history of the revision of the Circular.

2. ACTION BY THE FAL PANEL

2.1 The FAL Panel is invited to note the contents of the attached document.

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APPENDIX A TO FALP/6-IP/5

PASSENGER NAME RECORD (PNR) DATA

General Comments on the 26Oct09.Draft Circular 309

Cuba: a) All proposals for Circular 309 should be taken up at FALP/6. b) States with experience in implementing/applying PNR should explain their practical difficulties with PNR application.

Secretariat: a) This will be done. The working group will make a report to FALP/6 and the proposals will be discussed. b) FALP/6 participants could consider making presentations on their experience on PNR transfer.

France: a) We strongly support the push method to transmit PNR data, but we agree that it is up to each State to make its decision on the method it will implement;
b) Airlines should only transmit the data collected for their own purposes;
c) Sanctions may be imposed on airlines if they do not transmit data, but not if these data turn out to be false. Airlines are unable to check them (e.g. contact address);

Netherlands: The previous comment of the Netherlands concerning UN/EDIFACT PAXLST and passenger related data exchange remain unchanged, i.e., Required PNR information should conform to specifications and procedures for standardised messages, in line with methods and procedures for API messages (UN/EDIFACT PAXLST). It should be examined to add something on this issue in the PNR Guidelines, since it prevents arbitrariness. In this respect IATA is currently in the process to establish the new PNR PUSH EDIFACT standard. We believe ICAO should be involved in this process.

Secretariat: A separate WP on this will be presented at FALP/6 by the Secretariat.

Switzerland: With regard to our previous comment, “The possibility of a periodical review by a State whose airline(s) provide PNR data to another State regarding the implementation of the PNR system (data protection, data processing etc.) should be taken into consideration. in connection with the possibility of a periodical review by a State whose airline(s) provide PNR data to another State”: We are convinced that this is a helpful measure to assure the exchange of PNR data in conformity with the principles laid down in these Guidelines. Therefore, we would **support further discussions on this issue** and would welcome the **insertion of a new paragraph.**

Secretariat: Not sure how this would work in practice. Keep **pending for FALP/6** for discussions and a resolution.

1. WHAT IS A PASSENGER NAME RECORD (PNR)?

- 1.1 [No comments]
1.2 [No comments]
1.3 [No comments]

1.4 Aircraft operators specializing in charter air services often do not hold PNR data in electronic form. In some cases, for example, where they use a DCS, they will have a limited PNR record but only once the flight has closed. Regardless of the process by which they receive PNR data, these operators may still be required to provide any captured data to States requesting it.

1.4: Comments from WG on 26Oct09 Draft:

United Kingdom: Amend para. 1.4 as follows: “Aircraft operators specializing in charter air services often do not hold PNR data ~~in electronic form~~. In some cases, for example, where they use a DCS, they will have a limited PNR record but only once the flight has closed. ~~Regardless of the process by which they receive PNR data, these operators may still be required to provide any captured data to State requesting it.~~”

The current wording of 1.4 implies that charter carriers may hold PNR data other than in electronic form, which we do not understand to be the case. The third sentence does not sit well in section 1, which simply describes what a PNR is.

Secretariat’s comments: Please see “**2ndDraft revision.Clean version.15Apr2010**”

- 1.5 [No comments]
1.6 [No comments]

1.7 While PNRs may include many of the separate data elements described in the list of possible elements contained in Annex 1 to these guidelines, relatively few of these elements are necessary (mandatory) to create a PNR. Accordingly, the structure of individual PNRs and the amount of data they contain will vary widely.

1.8 The number and nature of the fields of information in a PNR will vary depending on the reservation system used during the initial booking, or other data collection mechanism employed, the itinerary involved and also upon the special requirements of the passenger. The possible fields and subfields of PNR data may expand to more than sixty items, as listed in Annex 1 to these guidelines. PNR data fields are subject to change based on operational requirements and technological developments.

Action proposed on para. 1.7 and 1.8 as a result of comments made by The Netherlands & Switzerland on 26Oct09 draft:

Re-draft para. 1.7 as follows: “~~While~~ PNRs may include many of the separate data elements described in the list of possible elements contained in Annex 1 to these guidelines. However, relatively few of these elements are necessary (mandatory) to create a PNR. As pointed out in paragraph 1.3 above, an airline operating system may have a limited capability of incorporating data elements registered in the DCS (e.g. all check-in information, all seat information, all baggage information and ‘go-show’ and ‘no-show’ information) into a PNR. Accordingly, the structure of individual PNRs and the amount of data they contain will vary widely.”

Action proposed on para. 1.8:

Re-draft para. 1.8 as follows: “The number and nature of the fields of information in a PNR will vary depending on the reservation system used during the initial booking, or other data collection mechanism employed (e.g. the DCS), the itinerary . . .” [rest unchanged]

1.7: Comments from WG on 26Oct09 Draft:

Netherlands: Finds this new para. sufficient.

Switzerland: We agree with the proposed action to re-draft the paragraph. However, we suggest modifying the second sentence of the re-drafted version as follows: “...contained in Annex 1 to these guidelines. *However, in practice and as described in paragraph 1.3, airline operators capture only a limited number of data as key elements for the creation of a PNR.* As pointed out in paragraph 1.3 above, an airline...”

Secretariat: Additional text, as suggested by Switzerland, incorporated, with minor editorial changes. Please see “**2ndDraft revision.Clean version.15Apr2010**”

1.8: Comments from WG on 26Oct09 Draft:

Netherlands: Finds this new para. sufficient.

Switzerland: We agree with the action proposed and accept the re-drafted version of this paragraph.

Secretariat: Please see “**2ndDraft revision.Clean version.15Apr2010**”

1.9 [No comments]

1.10 PNRs may contain data, e.g. meal preferences and health issues as well as free text and general remarks, legitimately entered to facilitate a passenger’s travel. Some of these data may be considered sensitive and require appropriate protection. Although they can be relevant in determining the risk that a passenger might represent, such data should not be used as the primary source for such assessment.

1.10: Comments from WG on 26Oct09 Draft:

Switzerland: With regard to the data covered by this paragraph, we are of the opinion that the last part of the paragraph (“...such data should not be used as the primary source for such assessment.”) should specify the conditions which allow the use of such data. Therefore, we suggest the following modification: “...Although they can be relevant in determining the risk that a passenger might represent, ~~such data should not be used as the primary source for such assessment~~ such data should only be taken into consideration if concrete indications exist which require the use of such data for the purposes listed in section 2.2 a) – d) below.

United States: Sensitive data does need to be protected, and it is recommended that the second sentence of 1.10 should be amended as follows: “~~Some of these data may be considered sensitive and require appropriate protection~~ It is particularly important that carriers and States protect this data.”

Secretariat: Please see “**2ndDraft revision.Clean version.15Apr2010**”: both proposals accommodated.

1.11 [No comments]

1.12 [No comments]

2. WHY ARE STATES REQUIRING PNR DATA TRANSFER?

2.1 A number of States consider that PNR data are critically important for the threat assessment value that can be derived from the analysis of such data, particularly in relation to the fight against terrorism. They have thus legislated or are planning to legislate for aircraft operators to provide their public authorities with PNR data.

2.1: Comments from WG on 26Oct09 Draft:

Netherlands: Insert the following sentence: “In addition, a number of States consider PNR data important for the prevention, investigation or prosecution of a terrorist offence or serious crime.”

United Kingdom: Amend first sentence, as follows: “fight against terrorism and serious crime.”

Secretariat: Please see “**2ndDraft revision.Clean version.15Apr2010**”: both proposals accommodated.

2.2 Identification of potentially high-risk passengers through PNR data analysis provides States and aircraft operators with a capacity to:

- a) improve aviation security;
- b) enhance national and border security;
- c) prevent and combat terrorist acts and related crimes and other serious crimes that are transnational in nature, including organized crime, and to enforce warrants and prevent flight from custody for such crimes;
- d) protect the vital interests of passengers and the general public, including health;
- e) expedite customs and immigration processing at airports; and

2.2(e). Comments from WG on 26Oct09 Draft:

Netherlands: Replace the word “expedite” by “enhance” or “improve”.

Secretariat: Please see “**2ndDraft revision.Clean version.15Apr2010**”: “improve” used.

- f) facilitate and safeguard legitimate passenger traffic.

3. WHAT IS THE PURPOSE OF THESE GUIDELINES?

[NO COMMENTS]

4. LAWS OR REGULATIONS

4.1 The requirement for PNR data transfer should be governed by explicit legal provisions. The reasons for requiring PNR data should be clearly expressed in the appropriate laws or regulations of the State or in explanatory material accompanying such laws or regulations, as appropriate.

4.1: Comments from WG on 26Oct09 Draft:

Netherlands: We find this para. sufficient.

Secretariat: No action required.

4.2 [No comments]

4.3 An aircraft operator is obliged to observe the laws of both the State from which it transports passengers (State of departure) and the State to which these passengers are transported (destination State). Therefore, when a destination State legislates with regard to its PNR data transfer requirements, it should do so cognizant of the fact that *existing* laws of other States may affect an operator's ability to comply with these requirements. Where a conflict arises between any two States, or where an operator advises of a conflict, the States involved should consult each other to determine what can be done to enable affected operators to continue to operate within the bounds of the laws in both States.

4.3: Comments from WG on 26Oct09 Draft:

Switzerland: The last sentence of the existing paragraph 4.3 ("*Where a conflict arises between two States, or where an operator advises of a conflict,...to operate within the bounds of the laws in both States.*") regulates the same issue as the new paragraph 4.4 (cp. below) and should be **deleted** in order to avoid a duplication.

United States: The second sentence should be deleted. It is unrealistic to expect legislatures/agencies to be cognizant of all laws/regulations around the world that may impact an air carrier. Also the final sentence should be revised as follows: "Where a concrete conflict arises between any two States' legislation, States should consult in order to avoid any adverse impact on international air travel resulting from the conflict."

Secretariat: a) The existing text of para. 4.3 is composed of the following elements: 1) Observance of laws [1st sentence]; 2) Cognizance of laws of other States [2nd sentence]; 3) Conflict of laws [3rd sentence]; and 4) Consultation to resolve conflict of laws [3rd sentence].

b) No one has a problem with element 1, so it is retained.

c) The Secretariat feels that the US has a point with regard to element 2, so agrees it could be deleted.

d) Placing element 1 and elements 3 and 4 into separate paragraphs might serve to improve the text, as a whole. Therefore, please see "**2ndDraft revision.Clean version.15Apr2010** whereby para. 4.3 now contains element 1 as a stand-alone para., sentence 2 (element 2) has been deleted and sentence 3 (elements 3 and 4) also deleted, for consideration separately (along with the issues raised by Switzerland and the US) under "new para. 4.4" below.

IATA's suggested text for a new para. 4.4:

4.4 Where the existing laws of the State of departure prevent a carrier from complying with the requirements of the destination State, the destination State should suspend the requirement for PNR data until the conflict is resolved, and no action should be taken against a carrier who is not able to supply data in this circumstance.

As a result of the comments received on IATA's suggestion for a new para. 4.4, the Secretariat noted that *suspension* of PNR collection was not supported. However, the point on sanctions was supported and therefore the Secretariat proposed, in the **26Oct09 draft**, that the IATA text be redrafted as follows: "4.4 Where the existing laws of the State of departure prevent a carrier from complying with the requirements of the destination State, both States should enter into consultation to resolve the conflict within an agreed period that should not exceed [3 months]. In the meantime, the States concerned should not impose fines or other sanctions for non-compliance until the conflict is resolved."

Proposed New 4.4: Comments from WG on 26Oct09 Draft:

Australia: a) Australia is comfortable with the inclusion of the first sentence of the proposed new para. 4.4; b) however, while appreciating the concerns behind the suggested new paragraph 4.4, Australia regards as unacceptable the inclusion of the second sentence of the proposed paragraph. We oppose the inclusion in the guidelines of any text which seeks to require governments to suspend PNR collection in accordance with their valid domestic laws and regulations, or which mandates governments to refrain from enforcing their valid domestic laws and regulations.

France: i) Suggest deletion of "that should not exceed [3 months]" for two reasons: 1. If there is strong disagreement between the States of departure and destination, it could be difficult to conclude an agreement in such short time; 2. If the destination State has no regulation on data protection, it could take advantage of a strict deadline to impose its point-of-view instead of negotiating; ii) We agree with Canada and the UK. PNR requirement is based on a regulation. To suspend, in case of disagreement, this requirement means to suspend the implementation of this regulation, which is not possible. But we could suspend sanctions until the problem is solved (as suggested by the UK).

Netherlands: We find this new paragraph sufficient, although we suggest that the time period of "3 months" should be replaced by the words "as soon as possible."

Switzerland: We agree with the action proposed regarding the new paragraph 4.4 and support the procedure as well as the time period foreseen. We also recognize the judicial difficulties that might arise in the event of a suspension of the PNR requirement. Therefore, the requirement as such remains but should not lead to any sanctions or fines for the concerned airlines. This leads at the end to the same result (as proposed), simply with a different initial position. The issue of settlement of differences should be covered in a separate paragraph as it is suggested. In our understanding, the last sentence of the existing paragraph 4.3 ("Where a conflict arises between two States, or where an operator advises of a conflict,...to operate within the bounds of the laws in both States.") regulates the same issue as the new paragraph 4.4 and should be deleted in order to avoid a duplication.

United Kingdom: Amend proposed new 4.4 as follows: "Where the existing laws of the State of departure prevent a carrier from complying with the requirements of the destination State, both States should enter into consultation to resolve the conflict within an agreed period that should not exceed [3 months]. ~~In the meantime~~ Pending resolution of the conflict, the States concerned should ~~not impose~~ consider whether the suspension of fines or other sanctions for non-compliance is appropriate given the particular circumstances

of the case until the conflict is resolved.”

United States: As expressed by other member states and ICAO, the language to suspend PNR requirements is not supported. On the other hand, there was some sympathy for suspending fines and other sanctions against operators during consultations. **Rather than adding a new 4.4**, we suggest adding another sentence to the end of 4.3: “Pending resolution of the conflict, States are encouraged to suspend fines and other sanctions against operators providing PNR.”

Secretariat: The text proposed by the Secretariat for a new 4.4 included the following elements: 1) Non-compliance of laws by airlines; 2) Conflict of laws; 3) Consultation to resolve conflict of laws [1st sentence]; 4) Fines and sanctions. [2nd sentence]

1st sentence: A majority supports retention of this sentence, but with amendments. Therefore, please see “**2ndDraft revision.Clean version.15Apr2010** for a new text for 4.4. Also, “where” replaced by “if” to make the text more specific.

2nd sentence: There appears to be some confusion regarding this sentence. It does not address suspension of *PNR collection*, as the comments seem to suggest (Australia, France). It is about fines and sanctions for non-compliance with the afore-mentioned conflicting laws. Therefore, please see “**2ndDraft revision.Clean version.15Apr2010** for a new text for 4.5 that follows the US text with some changes.

5. PNR DATA ELEMENTS

5.1 As seen in section 1, PNRs can contain an extensive amount of data. States should limit their requirements to the transfer of those PNR elements which are relevant and not excessive for the purposes listed in section 2. Specific data elements that may be available from an operator’s system(s) are set out in Annex 1 to these guidelines. The principles of section 9 (Filtering of PNR data) should be applied, as appropriate, in this regard.

5.1: Comments from WG on 26Oct09 Draft:

Netherlands: We find this paragraph sufficient.

United States: We recommend that “relevant and not excessive” be replaced with “necessary and relevant”

Secretariat: Please see “**2ndDraft revision.Clean version.15Apr2010**. Amended.

5.2 States should not require an operator to provide PNR data that are not already collected or held in the operator’s reservation or departure control systems. The specific data elements that might be available from an aircraft operator’s system will also depend on the type of air transport services provided by the operator.

5.2: Comments from WG on 26Oct09 Draft:

Australia: Australia agrees that the guidelines should make clear that aircraft operators should only be held responsible for transfer of data that is available in their system. Noting the other comments provided on this issue, and the Secretariat’s remarks, we propose the issue could be addressed through [the amendment of the first sentence of para. 5.2 as follows]: “States should not require **or hold** an operator **responsible for provision of to provide** PNR data that are not already collected or held in the operator’s reservation or departure control systems. . . .

Switzerland: We support the wording suggested regarding a new paragraph 5.2.1 (below). However, we suggest including this sentence in the **existing paragraph 5.2**, reading as follows: “States should not require an operator to provide PNR data that are not already collected or held in the operator’s reservation or departure control systems. **An operator should only be held responsible for data that is available in its reservation system.** The specific data elements that might be available from an aircraft operator’s system will also depend on the type of air transport services provided by the operator.”

Secretariat: Please see “**2ndDraft revision.Clean version.15Apr2010**”: both proposals accommodated.

[Proposal to insert a new 5.2.1 made in 26Oct09 draft]

As a result of “other comments” made by the Netherlands and Switzerland on Section 5 of the Guidelines, the Secretariat wondered if a new 5.2.1 should be inserted, as follows: “An operator should only be held responsible for data that is available in its reservation system”

Comments from WG on 26Oct09 Draft for new 5.2.1:

Netherlands: Agree with the proposal for a new para. 5.2.1.

Switzerland: (See existing 5.2 above)

United Kingdom: Does not support insertion of new 5.2.1. Retain original 5.2 as guidance.

United States: The proposed new language from the Netherlands and Switzerland should be considered as part of further discussion for 6.3.

Secretariat: **New 5.2.1 not required** as a result of Switzerland’s suggestion under 5.2 above.

6. PNR DATA PROCESSING

6.1 States should require PNR data only of those passengers on flights that are scheduled to enter, depart or transit through airports situated in their territories.

6.1: Comments from WG on 26Oct09 Draft:

Australia: As the Secretariat notes, there is a similarity between the suggestion for a new para. 6.3 and the existing para. 6.1. It is desirable that the obligation to provide PNR data should clearly rest with one single entity, and therefore clarification that carriers not be expected to provide PNR data to a State into which they do not physically operate is desirable. The point could be addressed by **amending para. 6.1** to be clearer that the obligation to provide data rests with the operating carrier:

“States should **only** require PNR data **from aircraft operators who directly operate** ~~only of those passengers~~ on flights that are scheduled to enter, depart or transit through airports situated in their territories.”

Such an amendment to para. 6.1, to make it clear that only aircraft operators who directly and physically operate into a State may be required to provide PNR data would obviate the need for a new para. 6.3.

Secretariat: Please see “**2ndDraft revision.Clean version.15Apr2010**. Amended.

- 6.2 A State obtaining PNR information should, as a minimum:
- a) limit the use of the data to the purpose for which it collects them;
 - b) restrict access to such data;
 - c) ensure that the data are adequately protected;

6.2 (c): Comments from WG on 26Oct09 Draft:

United States: The term “adequately protected” is vague; we recommend that 6.2(c) be deleted, and the chapeau of 6.2 be amended to read: “It is particularly important that this data be protected, and therefore a State obtaining PNR information should, as a minimum.”.

Secretariat: Please see “**2ndDraft revision.Clean version.15Apr2010**. Amended.

- d) limit the period of data storage, consistent with the purposes for which data are transferred;
- e) ensure that individuals are able to request disclosure of the data that are held concerning them, consistent with 14.3 of these guidelines, in order to request corrections or notations, if necessary; and
- f) ensure that individuals have an opportunity for redress (14.4 refers).

IATA’s suggested text for a new sub-para. 6.2 (g):

g) ensure that data transfer protocols and appropriate automated systems are in place to access or receive the data in a manner consistent with these guidelines before implementing a legislative requirement for PNR data.

As a result of the comments received on IATA’s suggestion for a new para. 4.4, the Secretariat suggested, in the **26Oct09 Draft**, that the IATA text be re-drafted as follows: “6.2 g) ensure that data transfer protocols and appropriate automated systems are in place to access or receive the data in a manner consistent with these guidelines.”

6.2g): Comments from WG on 26Oct09 Draft:

France: We share the Canadian stance. We support the new wording of 6.2(g).

Switzerland: We agree with the action proposed and the wording suggested regarding the new paragraph 6.2(g).

United States: We agree with Canada that for sound reasons, PNR requirements are typically enacted before detailed data transfer protocols are adopted. Since IATA, ICAO, and member states are working on technical guidelines for PNR data transfer, we prefer to focus on that positive process in any new language. Because all of 6.2 addresses data protection rather than data transfer, we suggest that rather than adopting a new 6.2 (g), we adopt a new 6.3: “When available, ICAO technical data transfer protocols should be utilized for providing PNR data as appropriate.”

Secretariat: a) Agree with the US that 6.2 addresses data protection, whilst the proposed new 6.2 g) is about data transfer; b) Do not quite understand the gist of the US suggestion for a new 6.3, therefore keep this **PENDING** for more input/discussion during FALP/6.

IATA's suggested text for a new para. 6.3:

6.3 States should require PNR data only from carriers who directly operate flights that are scheduled to enter, depart or transit through airports situated in their territory. States should not require data from any agent or third party marketing or selling tickets on such flights, including carriers operating in a code-share arrangement.

As a result of the comments received on IATA's suggestion for a new para. 4.4, the Secretariat suggested, in the **26Oct09 Draft** that action on this should be kept pending, following further discussions.

6.3: Comments from WG on 26Oct09 Draft:

Australia: As the Secretariat notes, there is a similarity between the suggestion for a new para. 6.3 and the existing para. 6.1. It is desirable that the obligation to provide PNR data should clearly rest with one single entity, and therefore clarification that carriers not be expected to provide PNR data to a State into which they do not physically operate is desirable. The point could be addressed by **amending para. 6.1** to be clearer that the obligation to provide data rests with the operating carrier:

“States should **only** require PNR data **from aircraft operators who directly operate** ~~only of those passengers on~~ flights that are scheduled to enter, depart or transit through airports situated in their territories.”

Such an amendment to para. 6.1, to make it clear that only aircraft operators who directly and physically operate into a State may be required to provide PNR data would obviate the need for a new para. 6.3.

France: A comment on charter flights: most of the time, when they are chartered, airlines do not have PNR data. Aircraft, or blocks in them, are booked by a tour operator or travel agency and sold to passengers by travel agencies. In that case, airline clients are not passengers, but tour operators. Most of the time, airlines are just given the passenger list a few hours before departure. Only travel agencies have the booking details (e.g. credit card numbers, price paid, etc.)

Switzerland: We agree with IATA's comments that the responsibility for the provision of data should lie with the operating carrier (a definition of operating carrier and marketing carrier is required). The fact that the amount of reservation data being passed from an agent to an airline may be poor or incomplete should not lead to a situation in which the operating carrier is obliged to collect additional data from the marketing carrier or an agent (principle stated in paragraph 5.2 of Cir 309). However, we also agree with the Secretariat's suggestion to further discuss this issue and to analyze the practical implications of IATA's suggestion. Therefore, we also consider paragraph 6.3 (new) as pending.

United States: Agreed, the issue of limiting PNR to the operating carrier only needs further discussion.

Secretariat: Although 6.1 has been amended, as suggested by Australia, all comments appear to indicate that this is a complicated issue that requires further discussion. Therefore, keep **PENDING for FALP/6**.

7. METHODS OF PNR DATA TRANSFER

- 7.1 [No comments]
7.2 [No comments]

7.3 However, it is recommended that a State consider the adoption of the “push” method because of the operator’s position as the guardian and controller of the PNR data. From a data protection point of view, the “push” method may enable the operator to better fulfil its legal responsibility for the lawfulness of PNR data transfer.

7.3: Comments from WG on 26Oct09 Draft:

United States: It is recommended that the second sentence be removed, since the “push” method does not necessarily provide additional data protection. Additionally, many carriers still utilize the “pull” method for providing PNR and should not be required to invest in changing to a “push” method, where they can already use the push method as an option.

Secretariat: Please see “**2ndDraft revision.Clean version.15Apr2010**. Amended.

- 7.4 [No comments]

8. FREQUENCY AND TIMING OF PNR DATA TRANSFER

When developing the technical capability to enable PNR data to be pushed or pulled, States should determine the frequency and timing of the data transfer, taking into consideration the limitations and capabilities of aircraft operators’ systems.

(8.1): Comments from WG on 26Oct09 Draft:

Netherlands: The words “or pulled” should be deleted, since this text concerns the push method.

Secretariat: Please see “**2ndDraft revision.Clean version.15Apr2010**. Amended.

IATA’s suggested text for new para. 8.2:

8.2 The timing and frequency of data transfer should be limited to that strictly necessary for law enforcement purposes. States should routinely request data on a scheduled basis, with a maximum of two iterations of data per flight.

In exceptional circumstance and where States identify a specific threat, data for a given passenger or PNR may be requested on an ad-hoc basis.

As a result of the comments received on IATA’s suggestion for a new para. 4.4, the Secretariat suggested, in the **26Oct09 Draft** that two new paragraphs 8.2 and 8.2.1, as follows, be inserted in the Circular:

“8.2 The timing and frequency of data transfer should be limited to that strictly necessary for the purposes listed in section 2. States should routinely request data on a scheduled basis, and should seek to minimize the number of times PNR data is transmitted for a particular flight.

8.2.1 In exceptional circumstances, where States identify a specific threat, they may request data for a given passenger or PNR on an ad-hoc basis.”

8.2: Comments from WG on 26Oct09 Draft:

France: We support the new wording.

Netherlands: This new para. seems sufficient, although the Netherlands prefers to replace the word “request” by “be provided with”, since this better describes the push method.

Switzerland: We agree with the action proposed and the wording suggested regarding the new paragraph 8.2

United Kingdom: The UK proposes that the word ‘strictly’ is removed from the paragraph as the interpretations of ‘strictly’ will vary greatly between states.

United States: 8.2, 8.2.1: We **do not support** the proposed new language for 8.2 or 8.2.1, but agree with the Secretariat’s idea to adopt something like the new RP 3.47.4 of Annex 9. We would add a new sentence at the end of 8: “The number of times PNR data is transmitted for a specific flight should be minimized.”

Secretariat: There appears to be **general support** for a new 8.2. Please see “**2ndDraft revision.Clean version.15Apr2010**. Proposed text for new 8.2 amended, as suggested by the Netherlands and the UK.

8.2.1: Comments from WG on 26Oct09 Draft:

Australia: Amend 8.2.1 to encompass a State requesting data for a given flight: “In exceptional circumstances, where States identify a specific threat, they may request data for a given passenger, flight or PNR on an ad-hoc basis.”

Switzerland: With regard to the proposed para. 8.2.1 (ad hoc request) we also agree with the wording but suggest considering it as a separate paragraph and defining it as a new paragraph 8.3.

United Kingdom: The UK proposes that the words ‘In exceptional circumstances’ is removed from this paragraph as interpretation will vary from State to State.

United States: 8.2, 8.2.1: We **do not support** the proposed new language for 8.2 or 8.2.1, but agree with the Secretariat’s idea to adopt something like the new RP 3.47.4 of Annex 9. We would add a new sentence at the end of 8: “The number of times PNR data is transmitted for a specific flight should be minimized.”

Secretariat: There appears to be **general support** for a new 8.2.1. Please see “**2ndDraft revision.Clean version.15Apr2010**. Proposed text for new 8.2.1 amended, as suggested by Australia and the UK. Re-numbered 8.3, as suggested by Switzerland.

9. FILTERING OF PNR DATA
10. STORAGE OF PNR DATA

[Section 9, 10: NO COMMENTS]

11. ONWARD TRANSFER

11.1 [No comments]

11.2 When PNR data acquired by one State are to be transferred to another, the purposes for such onward intergovernmental transfer or sharing should be consistent with those set out in 2.2, and the conditions under which such a transfer will take place should be resolved during the process contemplated in 4.3. States should bear in mind that the onward transfer of data could expose the aircraft operator to civil liabilities.

11.2: Comments from WG on 26Oct09 Draft:

Switzerland: The reference made to paragraph 4.3 in the existing paragraph 11.2 of Cir 309 should include a reference to the new paragraph 4.4 as well, reading as follows: *...the conditions under which such a transfer will take place should be resolved during the process contemplated in 4.3 and 4.4 above.*

Secretariat: Please see “**2ndDraft revision.Clean version.15Apr2010.** Amended.

12. PNR DATA PROTECTION: GENERAL PRINCIPLES

12.1 [No comments]

12.2 Where no national data protection legislation is in place, these guidelines should be used as the basis for the development of laws or regulations concerning PNR data transfer and data processing.

12.2: Comments from WG on 26Oct09 Draft:

United States: We recommend redrafting to account for informal procedures to protect PNR data pending adoption of formal laws or regulations: “Where no national data protection legislation is in place, States should have procedures in place to protect a passenger’s PNR data, and States should develop data protection laws or regulations concerning PNR data transfer and data processing.”

Secretariat: Do not understand the suggestion made. Keep **pending for FALP/6.**

12.3 A reasonable balance should be achieved between the need to protect a passenger’s PNR data and a State’s prerogative to require disclosure of passenger information relevant to determining the risk that a passenger might present. Accordingly, States should not unduly restrict PNR data transfer by aircraft operators to relevant authorities of another State, except where that State does not have adequate data protection measures in place.

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Appendix A

12.3: Comments from WG on 26Oct09 Draft:

Netherlands: We propose the deletion of the wording “relevant to determining the risk that a passenger might prevent” since this excludes the prevention, investigation and prosecution purposes proposed by the

Netherlands under 2.1.

United States: We agree that the matter of “adequate” data protection is subjective, and recommend that the end of the last sentence (“except where that State does not have adequate data protection measures in place”) be replaced with “and states should ensure that a passenger’s PNR data are protected.”

Secretariat: Please see “2ndDraft revision.Clean version.15Apr2010. Amended.

IATA’s suggested text for a new para. 12.4:

12.4 Where a State requiring PNR data is not proven to have adequate data protection measures in place, States should enter into bilateral or multilateral negotiations in order to reach an agreement on data protection measures, before commencing a PNR programme.

As a result of the comments received on IATA’s suggestion for a new para. 12.4, the Secretariat suggested, in the **26Oct09 Draft** that a **new paragraph 12.4 was perhaps not required.**

Proposed New. 12.4: Comments on WG on 26Oct09 Draft:

United States: We agree that new paragraph 12.4 is not necessary.

With regard to other comments made on Section 12 that were reflected in the 26Oct09 Draft:

Canada made a general comment on IATA’s FALP/5 paper to the effect that an Adequacy Decision from the European Commission or an Agreement between the EU and receiving States being present would ensure data protection are troubling as the entire legal basis for the Data Protection Directive requiring Agreements and Adequacy Findings may change if the Lisbon Treaty is passed.

The Secretariat noted that this could be addressed later, following the formal passage of the Lisbon Treaty.

Comments from WG on 26Oct09 Draft:

Switzerland: We share the opinion that for the time being no action is required since the concerns raised are covered by paragraphs 12 and 13 of Cir 309. However, if concerns remain and the need for further discussions as well as for specification of this issue exists, we are willing to participate in the development of respective solutions.

Secretariat: No action required, for the time-being.

13. SECURITY AND INTEGRITY OF PNR DATA
14. TRANSPARENCY AND PASSENGER REDRESS
15. COSTS

[Sections 13, 14 and 15: NO COMMENTS]

16. OTHER ISSUES SANCTIONS AND PENALTIES

Title of Section 16: Comments on WG on 26Oct09 Draft:

Switzerland: Agree with IATA to amend the title.

United States: We would defer a decision [on the title] until we see what ends up in Section 16.

Secretariat: Pending **Decision for FALP/6.**

16.1 States should acknowledge that PNR data collected by aircraft operators cannot be verified for accuracy or completeness. Therefore, neither should action be taken against an operator nor should an operator be held legally, financially or otherwise responsible for transferring PNR data that have been collected in good faith, but which are later found to be false, misleading or otherwise incorrect.

16.1: Comments on WG on 26Oct09 Draft:

United States: We believe that some text should be added at the end to account for emergency flight diversions: “Additionally, when a carrier has not transferred PNR data for a diverted flight, States should take the circumstances surrounding the diversion into account.”

Secretariat: Please see “**2ndDraft revision.Clean version.15Apr2010.** Amended.

IATA’s suggested text for a new para. 16.2:

16.2 States should not hold carriers legally, financially or otherwise responsible for transferring PNR data for flights that they do not physically operate to, from or through the State imposing the requirement.

As a result of the comments received on IATA’s suggestion for a new para. 16.2, the Secretariat suggested, in the **26Oct09 Draft** that: a) a definition for “marketing carrier” would also be required; and b) proposed a text for a new 16.2 as follows: “States should not hold marketing carriers legally, financially or otherwise responsible for the transfer of PNR data of passengers carried by other carriers into, away from or in transit through airports situated in their territories.”

16.2: Comments on WG on 26Oct09 Draft:

Australia: The issues raised by the proposed new para. 16.2 are similar to the issues addressed by Australia’s proposed amendment to para. 6.1 above. The following wording for para. 16.2 would address this issue, and align the wording with our proposed amendment above: “When penalties and sanctions are imposed, States should only impose them on aircraft operators who directly operate flights that are

scheduled to enter, depart or transit through airports situated in their territories.”

France: We support the Secretariat comment on the requirement of a definition for the “marketing carrier”.

Netherlands: This new para. introduces the word “marketing carriers”. This word should be defined.

Switzerland: In our understanding this question is linked to the proposed new paragraph 6.3 (which is pending for further discussion). If States can only require the operating carrier to provide them with PNR data, consequently only this carrier could face sanctions or penalties. Therefore, the wording of a new paragraph 16.2 should focus on the operating carrier as well (including a definition of operating carrier and marketing carrier if not inserted in a previous paragraph). The sentence as it was suggested under ‘Action proposed’ should be in line with the proposed wording in paragraph 6.3 (new), including the agents or other third parties marketing or selling tickets. A possible wording could be the following:

States can only hold carriers legally, financially or otherwise responsible for the transfer of PNR data of passengers which directly operate flights [in our understanding operating carriers] that are scheduled to enter, depart or transit through airports situated in the States’ territory. Agents, third parties marketing or selling tickets on such flights should on the contrary not be held liable.

Since in our understanding the solution for this paragraph is linked to the result for the new paragraph 6.3 the issue is considered ‘pending’ and should be further discussed.

United Kingdom: The UK is grateful for the clarification of the term ‘carrier’. In this instance, however we understand that some states may have legislation that does require information from the marketing carrier.

United States: The proposed language in 16.2 should be included as part of further discussions about the marketing vs. operating carrier.

Secretariat: Keep **PENDING** for FALP/6.

~~16.~~ 17. OTHER ISSUES

~~16.2~~ 17. States collecting PNR data shall strictly conform with the dispositions of Annex 13 to the Chicago Convention — *Aircraft Accident and Incident Investigation* on non-disclosure of records in the case of an accident or incident investigation (Chapter 5, 5.12).

IATA’s suggestion for a new Section:

Renumber Section 16, “Other issues” as number 17 and paragraph 16.2 as para. 17.

16.2 New 17: Comments on WG on 26Oct09 Draft:

Switzerland: Switzerland has filed a difference to Annex 13 to the Chicago Convention, Chapter 5.12 relating to the non-disclosure of records in the case of an accident or incident investigation. Therefore, in the event of collecting PNR data, Switzerland could not be bound by the new paragraph 17.

Secretariat: Noted.

Annex 1

PNR DATA ELEMENTS

(Paragraph 5.1 refers)

An operator's system(s) may include the following data elements:

<i>Data groups or categories</i>	<i>Component data elements</i>
...	[No comments]
Any collected API data	Any collected API data, e.g. name on passport, date of birth, sex, nationality, passport number
...	[No comments]

Annex 1: Comments on WG on 26Oct09 Draft:

Netherlands: i) The previous comment made by the Netherlands concerning "Any collected API data" remain unchanged, i.e. we believe that the value of 'Any collected API data' as mentioned in Annex 1 must be explained, *as in a PNR* this concerns non-verified information. Registration of API data at the moment of check-in, as most EU-based Airlines do, can be considered as verified information; ii) In addition, we propose to add the following sentence of the footnote at page 16 of the Guidelines: "Depending on an airline system these elements might or might not be part of a PNR."

Secretariat: i) Should some text be added to Annex 1, after "Any collected API data"? ii) Please see "2ndDraft revision.Clean version.15Apr2010. Amended.

[REST OMITTED: NO COMMENTS]

APPENDIX B TO FALP/6-IP/5

Cir 309: Guidelines on Passenger Name Record (PNR) Data
(15Apr2010.2ndDraft)

Para. No.	IATA's proposals (FALP/5-WP/26)	a) Comments on IATA's proposals ; b) Other comments	Secretariat's Remarks Action proposed: 26Oct09.Draft	Comments from WG on 26Oct09.Draft	Action proposed & included in 15Apr2010.2ndDraft Revision	Comments from WG or FALP/6 on 15Apr2010.2ndDraft Revision	
1. What is a Passenger Name Record (PNR)?							
1.1				No comments	1.1 Retained in 2 nd draft without change	1.1	
1.2					1.2 Retained in 2 nd draft without change	1.2	
1.3					1.3 Retained in 2 nd draft without change	1.3	
1.4					1.4 United Kingdom 1.4 Text Amended.	1.4	
1.5					No comments	1.5 Retained in 2 nd draft without change	1.5
1.6					1.6 Retained in 2 nd draft without change	1.6	
1.7		Netherlands Switzerland	Perhaps paras. 1.7 and 1.8 could be re-drafted to address the concerns expressed by the Netherlands and Switzerland. <u>New text proposed.</u>	1.7 Netherlands Switzerland	1.7 Text Amended as suggested by Switzerland	1.7	
1.8		Netherlands Switzerland			1.8 Text Amended, as proposed by Secretariat in 26Oct09 Draft	1.8	
1.9					No	1.9 Retained in 2 nd	1.9

	No comments	comments	draft without change	
1.10		1.10 Switzerland United States	1.10 Text Amended, as proposed by both States	1.10
1.11		No comments	1.11 Retained in 2 nd draft without change	1.11
1.12			1.12 Retained in 2 nd draft without change	1.12
OTHER COMMENTS RELATING TO SECTION 1 The elements required should not include data that are worthy for particular protection (e.g. data that indicates racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, health, or sex life of the individual). (Switzerland)		Secretariat: See para. 1.9 of the Guidelines. No action required.		
2. Why are States Requiring PNR Data transfer?				
2.1	No comments	2.1 Netherlands United Kingdom	2.1 Text Amended, as proposed by both States.	2.1
2.2 a)		No comments	2.2 a) Retained in 2 nd draft without change	2.2 a)
b)			b) Retained in 2 nd draft without change	b)
c)			c) Retained in 2 nd draft without change	c)
d)			d) Retained in 2 nd draft without change	d)
e)		2.1 e) Netherlands	e) Text Amended.	e)
f)		No comments	f) Retained in 2 nd draft without change	f)
OTHER COMMENTS RELATING TO SECTION 2		Secretariat:		

ICAO member states should limit the data requirements to those necessary for their government purposes. These data requirements should be specified in national legislation and determined in co-operation with all participants involved. The PNR Guidelines should make this clear. This prevents arbitrariness. (Netherlands & Switzerland)		See Sections 2, 4.1 and 5.1 of the Guidelines. No action required.				
3. What is the Purpose of these Guidelines?						
3.1	No comments		No comments	3.1 Retained in 2 nd draft without change	3.1	
3.2				3.2 Retained in 2 nd draft without change	3.2	
3.3				3.3 Retained in 2 nd draft without change	3.3	
3.4				3.4 Retained in 2 nd draft without change	3.4	
3.5				3.5 Retained in 2 nd draft without change	3.5	
4. Laws or Regulations						
4.1	No comments		4.1 Netherlands	4.1 No action required. Retained in 2 nd draft without change	4.1	
4.2			No comments	4.2 Retained in 2 nd draft without change	4.2	
4.3			4.3 Switzerland United States	4.3 Text Amended: only 1st sentence retained.	4.3	
—	Insert a new paragraph 4.4	Canada Netherlands NZ UK	<i>Suspension of PNR collection is not supported. Therefore, the Secretariat proposes that</i>	Australia France Netherlands Switzerland United Kingdom United States	4.4 Insert a new text.	4.4
					4.5 Insert a new text.	4.5

			the IATA text be redrafted, using a combination of texts suggested above. <u>New text proposed.</u>			
5. PNR Data Elements						
5.1	No comments		5.1 Netherlands United States	5.1 Text Amended.	5.1	
5.2			5.2 Australia Switzerland	5.2 Text Amended, as proposed by both States.	5.2	
OTHER COMMENTS RELATING TO SECTION 5		Secretariat: See para. <u>5.2 of the Guidelines.</u> It is not clear if these comments call for 5.2 to be amended. If so, a new 5.2.1 could be inserted: "An operator should only be held responsible for data that is available in its reservation system." New 5.2.1 to be inserted?	Netherlands Switzerland United States United Kingdom	As a result of Switzerland's suggestion to add a sentence to 5.2, a new 5.2.1 is not required.		
6. PNR Data Processing						
6.1	No comments		6.1 Australia (ref. 6.3)	6.1 Text Amended.	6.1	
6.2 a)			No comments	6.2 a) Retained in 2 nd draft without change	6.2 a)	
b)				b) Retained in 2 nd draft without	b)	

					change	
c)				6.2 c) United States	6.2 c) Text Amended.	c)
d)				No comments	d) Retained in 2 nd draft without change	d)
e)					e) Retained in 2 nd draft without change	e)
f)					f) Retained in 2 nd draft without change	f)
—	Insert a new subparagraph g)	NZ UK	Action proposed on new 6.2 (g)	France Switzerland United States	KEEP PENDING for FALP/6	
—	Insert a new paragraph 6.3	Netherlands	Action proposed on new 6.3: Pending, following further discussion.	Australia (see 6.1) Netherlands Switzerland United States	KEEP PENDING for FALP/6	
7. Methods of PNR Data Transfer						
7.1				No comments	7.1 Retained in 2 nd draft without change	7.1
7.2					7.2 Retained in 2 nd draft without change	7.2
7.3				7.3 United States	7.3 Text Amended.	7.3
7.4				No comments	7.4 Retained in 2 nd draft without change	7.4
OTHER COMMENTS RELATING TO SECTION 7		Secretariat: Please see para. 7.3 of the Guidelines. No action required.				
In order to strengthen the aspect of data protection, we strongly support the transmission of PNR data by using the 'push method'. (Switzerland)						
8. Frequency and Timing of PNR Data Transfer						
8		No comments		8. Netherlands	8.1 Text Amended.	8.1

—	Insert a new paragraph 8.1	Netherlands UK	Action proposed on new para. 8.2	France Netherlands Switzerland United Kingdom United States	New para. 8.2 inserted, amended as suggested.	8.2
			Action proposed on new para. 8.2.1	Australia Switzerland United Kingdom United States	New para. 8.3 inserted, amended as suggested.	8.3
9. Filtering of PNR Data						
9.1	No comments		No comments	9.1 Retained in 2 nd draft without change	9.1	
9.2				9.2 Retained in 2 nd draft without change	9.2	
9.3				9.3 Retained in 2 nd draft without change	9.3	
10. Storage of PNR Data						
	No comments		No comments	Retained in 2 nd draft without change		
11. Onward Transfer						
11.1	No comments		11.1 No comments	11.1 Retained in 2 nd draft without change	11.1	
11.2			11.2 Switzerland	11.2 Amended.	11.2	
12. PNR Data Protection: General Principles						
12.1	No comments		12.1	12.1 Retained in 2 nd draft without change	12.1	
12.2			12.2 United States	12.2: KEEP PENDING for FALP/6	12.2	
12.3			12.3 Netherlands United States	12.3: Text Amended, as proposed by both States.	12.3	
—	Insert a new paragraph 12.4	Canada UK	A new paragraph 12.4 is perhaps not required. Therefore, no action is	United States		

			proposed.			
13. Security and Integrity of PNR Data						
13.1	No comments		No comments	13.1 Retained in 2 nd draft without change	13.1	
13.2				13.2 Retained in 2 nd draft without change	13.2	
13.3				13.3 Retained in 2 nd draft without change	13.3	
13.4				13.4 Retained in 2 nd draft without change	13.4	
13.5				13.5 Retained in 2 nd draft without change	13.5	
13.6				13.6 Retained in 2 nd draft without change	13.6	
14. Transparency and Passenger Redress						
14.1	No comments		No comments	14.1 Retained in 2 nd draft without change	14.1	
14.2				14.2 Retained in 2 nd draft without change	14.2	
14.3				14.3 Retained in 2 nd draft without change	14.3	
14.4				14.4 Retained in 2 nd draft without change	14.4	
15. Costs						
15.1	No comments		No comments	15.1 Retained in 2 nd draft without change	15.1	
15.2				15.2 Retained in 2 nd draft without change	15.2	
16. Other Issues						
Title	Change title to read “Sanctions and Penalties”		Rename the title of Section 16 to “Sanctions and Penalties”	Switzerland United States	Title. KEEP PENDING for FALP/6	Title.

16.1	No comments			16.1 United States	16.1 Text Amended.	16.1
16.2 17.	Move to a new Section 17: other issues	NZ	Renumber “Other issues” as 17.	17. Switzerland	17. Pending	17.
—	Insert a new paragraph 16.2		A <u>definition for “marketing carrier”</u> (or some such term) would also be required. Would IATA please help here? Insert new 16.2	16.2 Australia France Netherlands Switzerland United States	KEEP PENDING for FALP/6	16.2
Annex 1: PNR Data Elements (Para. 5.1 refers)						
	—	Netherlands Switzerland	Comments not understood. Request for additional information and a specific suggestion. Action pending.	Netherlands	Annex 1. KEEP PENDING for FALP/6	Annex 1.
				(Footnote) Netherlands	Annex 1. Footnote. Amended	Annex 1. Footnote
Annex 2: Model Passenger Information/Notice Forms (Para. 14.2 refers)						
Form A	No comments			No comments	Retained in 2 nd draft without change	
Form B					Retained in 2 nd draft without change	
Annex 3: Glossary of Terms						
	No comments			No comments	KEEP PENDING for FALP/6: Addition of new definitions (e.g. for “marketing carrier”)	

Annex 4: List of Acronyms				
	No comments	No comments	Retained in 2 nd draft without change	

— END —