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TRANSFER OF PNR DATA FROM EUROPE TO THIRD COUNTRIES

The Association of European Airlines (AEA) and the International Air Transport Association (IATA) welcome the initiative of the European Commission to initiate discussions for a new approach and proposal for the consistent and properly controlled transfer of PNR data to third countries. The roadmap published by DG HOME in October 2013 represents a constructive first step to explore possible solutions to the challenges currently faced by airlines considering the increasing number of PNR data requests from third countries.

According to IATA assessment, currently 9 countries in the world are requiring PNR data with a minimum of 33 countries who have indicated their plans to introduce PNR data collection systems. So far, the European Union has only been able to negotiate PNR agreements with 3 of these countries – the US, Canada and Australia. Since 2013, airlines in Europe have been approached by Mexico, South Korea (initial request was in 2007), Russia, Brazil, New Zealand and Qatar with requirements for PNR data.

So far, airlines operating out of Europe have been put in the difficult position of being forced to refuse to transmit PNR data to these authorities as they are bound to comply with either national or EU legislation on data protection. That refusal has resulted, in several instances, to threats of sanctions, either financial or operational. Both AEA and IATA believe that this situation is no longer sustainable and that a more structured EU response to these PNR data requests from third countries is necessary.

In addition, these PNR data requests are not always aligned with international standards for the transfer of PNR data. These non-standard data requirements (i.e. requiring carriers to capture, store and transmit data not necessary to support their business model) not only pose challenges in terms of data protection, but also represent significant additional costs and operational impacts to be borne by the airlines and the travel agency community.

Against this background, AEA and IATA would like to submit the following comments on the 4 options presented in the Commission Roadmap from October 2013:

Option 0: Do nothing. It would fall on Member States to act if appropriate

A possible legal basis for the transfer of passenger data to third countries would have to be found in the national law(s) of the affected Member States. This would potentially lead to 28 different and fragmented systems, which would not only cause additional administrative and financial burdens on the industry, but also could create potentials distortions in the competitive environment between various airlines - depending on the Member State they are operating from.

Option 1: Continue with the current practice of considering the conclusion of a bilateral agreement between EU and each third country that asks for passenger data.

If the EU agrees to open negotiations with a third country, such an agreement would be adapted to the legislation of the EU and that particular third country. The advantages of this option are that – once ratified – it provides tailor-made solutions and legal certainty. The main disadvantage of this option is that it is time consuming, requires significant resources and risks leading to divergent outcomes due to the differences in the legal systems of the third countries. This current practice is currently showing its limitations with the significant increase in the number of PNR data requirements and corresponding workload faced by the European Commission.

Option 2: Multilateral approach: The Commission seeks a mandate from the Council to negotiate an international convention allowing the transfer of passenger data, for example at the UN level.

The main advantage of such an option is that the same conditions would apply to all countries and would provide a global guarantee for a standardised processing of PNR data, including the necessary guarantees for data protection. Once adopted, a third country requesting passenger data must act in accordance with such a convention. AEA and IATA are however aware that this would only constitute a rather long-term solution, considering the time needed to negotiates such an international convention. This option would not address the immediate challenges faced by the European Union and its airline industry.

Option 3: The Commission presents a proposal for a legal instrument providing an acceptable legal basis for the transmission of passenger data to third countries.

This instrument would provide clear criteria for third countries to comply with prior to their requiring EU-based airlines to transmit PNR data. The advantage of this option is that it would allow the EU to set the framework for transferring passenger data from EU citizens and/or EU territory to any compliant third country government. This approach would be clear and transparent to third countries and would also provide them an incentive to follow the given international standards for PNR data transmission, and to take into consideration the necessary elements of acceptable data protection. The enforcement however is questionable, therefore it requires further discussion.

In conclusion, after reviewing the 4 options, **AEA and IATA would favour in the short term option 3, a specific EU instrument to be developed, in accordance with the current standards and recommended practises as defined by WCO/IATA/ICAO**. This instrument would allow solving the current diplomatic deadlock in which the airlines are finding themselves with several countries.

In the longer term, and in parallel with the development of a European instrument, AEA and IATA would still encourage the European Union to initiate discussions leading to global adoption of a multilateral agreement on PNR data exchange. Ultimately, this longer term approach will establish a legal framework for the transfer of passenger data applicable to all interested parties, provide a higher level of legal certainty for airlines and ensure that adequate controls relating to data protection and data privacy are adopted and put into practice.