



**European Business Aviation
Association**

Position Paper

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EBAA position on Passenger Name Record Directive

Aviation, by its very nature, crosses borders and oceans. Terrorists have proved their ability to carry out attacks and acts of violence on any continent. They use aviation as an easy and quick means of travel. The terrorist attacks in Paris and more recently in Brussels forced the European institutions to come to a quick compromise for the setting-up of Passenger Name Record (PNR), as a key tool to identify the people potentially involved in terrorist acts. The legislative text is a European Directive which will require transposition at national level within 2 years. Air carriers will be required to transmit PNR data of extra-EU flights to competent authorities. It does not apply to other means of transportation.

PNR data is information provided by passengers and collected by air carriers during the reservation and check-in procedures: date of reservation, date(s) of intended travel, Names, Address and contact information, all forms of payment information, complete travel itinerary, etc. PNR is widely considered as a necessary step to fight against terrorism and serious crime. Notwithstanding this, it is important that new requirements are proportionate to all sectors of activity within the scope of associated legislation.

Business Aviation is a vital part of the European aviation infrastructure, providing links between remote communities not served by airlines, or any other direct means. The vast majority of Business Aviation operators are small or medium sized enterprises (typically 25 to 50 employees with between 3 and 7 aircraft on average in their fleet).

In most cases, Business Aviation operators do not boast large and complex Flight Operating Centers (FOC) to manage their daily operations. Moreover, the soft- and hardware are not as sophisticated as those used by airlines with automatic data transfer. Many operators have actually no reservation system at all. The rules related to the aviation data collection must be adapted and proportionate to each segment of the aviation sector, to the size of the companies in question and the number of passengers that they carry. Small structures should not be treated in the same way as large and complex ones.

EBAA fully supports the Directive's scope imposing the data transfer to air carriers '*to the extent that they have already collected such data in the normal course of their business*', which obviously limits the scope to operators having already the capability to ensure data transfer by electronic means. This is good as the Directive shouldn't create new and unnecessary obligations to small operators;

Data delivery timing is another issue. The Directive states that the data must be delivered “*24 to 48 hours before the **scheduled flight departure time***”. From a strict point of view, Business Aviation operations are non-scheduled and therefore fall out of this scope. It is important to highlight that Business Aviation is an on-demand transport mode and that flight departure times can greatly vary according to the will and need of the passenger. It is for instance quite common that the original scheduled departure time is changed by the customer several times during the day. It would therefore be very difficult for Business Aviation operators to transfer any meaningful data in the 24/ 48 hour timeframe as required.

Harmonisation is central for the aviation sector which by nature crosses borders. Europe should not work in isolation and should make sure that European and U.S. for instance, standards are the same. A lack of global harmonisation will reduce the effectiveness of the data collection usefulness.

Harmonisation among EU Member States is also paramount. A European Directive requires a transposition at national level which may lead to various interpretations by the 28 MS. Currently, there are considerable differences amongst EU MS in the approach to safety training, safety approval and oversight, security requirements. The same issue may manifest itself with regards to the setting of a European Passenger Name Record. States must standardise their data requirements and the format for the electronic transmission of passenger data.

The need for information should not be confused with business aviation’s need for privacy. Business Aviation, unlike scheduled business models, is not predicated on a system of mass transportation which is dependent on a high seat-load factor to guarantee a sustainable margin; it is an on-demand transportation means, and is affordable only to a limited number of passengers. There are currently around 1.5m BusAv passengers annually in Europe (compared to 850m passengers on airlines), including business leaders and their executive teams, government officials and owners.

The Directive underlines the imperative implementation of the Fundamental Rights principles and of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data. It also rightly provides the safeguards to ensure the necessary data protection such as the appointment of ‘*a data protection officer for monitoring the processing of PNR data and implementing relevant safeguards*’. However, the required degree of privacy in Business Aviation operations is even higher. Member States must take the necessary measures to guarantee this high level confidentiality protection when transposing the PNR Directive.

The Directive applies to air carriers with a “*valid operating licence or equivalent permitting it*” to carry passengers which operate extra-EU or intra-EU scheduled or non-scheduled flights. It is clear that this refers to commercial air transport. Part-NCO and -NCC, i.e. smaller General Aviation flights and more complex non-commercial operations are hence automatically exempted.

There are two major issues however. First of all, many non-commercial operators do have an AOC, for a number of reasons, and many non-commercial operations, i.e. with the owner(s) onboard, fly under AOC. The EBAA understands the reasoning behind the scope as defined by the legislator, but it cautions its applicability. The aim of the Directive is to collect data in order to ease the identification and track the flow of mostly anonymous people. Passengers embarking onboard a BusAv flight, whether commercial or, a fortiori, non-commercial, are very well known to the operator for obvious reasons.

Although the EBAA is aware of the necessity and very supportive of the efforts by Member States and the European Union to equip themselves with all the necessary means to track and control the flow of people travelling to, from and across Europe by air, the end cannot always justify any means. A PNR request to Business Aviation operators would have little impact in enhancing security because of the

close relationship that Business Aviation operators enjoy with their passengers. Such a request would be disruptive if great care and attention for proportionate measures is not applied.

The EBAA hence requests that operations using aircraft of 19 and less passengers are either fully exempted or, bearing in mind the conditions set out in Art. 8 of the Directive at the very least treated in a specific way more commensurate to their size and specificities.

About EBAA:

The European Business Aviation Association (EBAA) was founded in 1977 to defend the interests of business aviation. Today, more than 800 business aviation companies (direct members or members of associate organisations) rely on the EBAA to protect their business interests. It is the only voice to represent business aviation among the European institutions. For more information, visit www.ebaa.org.

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