



PERMANENT  
TECHNICAL  
COMMITTEE

PC0626Ea

-  
227<sup>th</sup>/228<sup>th</sup> Sessions

-  
18 – 20 May 2020

Brussels, 16 March 2020.

**PASSENGER FACILITATION AND CONTROL: UPDATE OF ICAO SARPS RELATING TO  
PNR**

**(Item XVI. b) on the Agenda)**

**(“B” Item on the Agenda)**

**SUMMARY**

**Purpose of document**

At the 13<sup>th</sup> WCO/IATA/ICAO Advance Passenger Information (API)/Passenger Name Record (PNR) Contact Committee Meeting held in October 2019, the ICAO Secretariat updated the Meeting on the development of the ICAO PNR Standards and Recommended Practices (SARPs) under Annex 9 (Facilitation) of the Chicago Convention.

The PTC will be updated on intersessional developments concerning this issue.

**Action required of the Permanent Technical Committee**

The Permanent Technical Committee is invited to:

- take note of intersessional developments related to the updating of the ICAO SARPs on PNR; and
- provide guidance as appropriate.

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## I. Background

1. At its 8148<sup>th</sup> Meeting, on 21 December 2017, the United Nations Security Council (UNSC) adopted Resolution 2396 (2017). The Resolution expressed grave concern over the acute and growing threat posed by foreign terrorist fighters (FTFs) returning or relocating, particularly from conflict zones, to their countries of origin or nationality, or to third countries; it also recalled Resolution 2178 (2014) that called upon UN Member States to require airlines operating in their territories to provide advance passenger information to the appropriate national authorities in order to detect the departure from their territories, or attempted entry into or transit through their territories, by means of civil aircraft, of designated individuals.
2. Resolution 2396 (2017) obliged UN Member States to develop the capability to collect, process and analyse passenger name record (PNR) data for the purpose of preventing, detecting and investigating terrorist offenses and related travel. In this regard, the UNSC urged ICAO to establish a standard for the collection, use, processing and protection of PNR data.
3. In response to the Resolution, ICAO created a PNR Task Force (PNR-TF) with a mandate to examine the existing Standards and Recommended Practices (SARPs) and suitably update them. The Task Force held a face-to-face meeting in the ICAO Middle East Regional Office in Cairo, Egypt from 18 to 20 August 2019. The WCO and IATA attended the meeting as observers.
4. During the 218<sup>th</sup> Session of the ICAO Council, held in autumn 2019, the ICAO PNR TF submitted a draft report on the updating of the PNR-related SARPs to the ICAO Air Transport Committee (ATC). This report consisted primarily of the following aspects:
  - recommended provisions, including draft updated SARPs, for the consideration of the ATC;
  - analysis and explanation of the recommended provisions;
  - impact assessment; and
  - necessary guidance on implementation.
5. The updating of the SARPs was expected to help reduce the conflict regarding laws that has been identified as one of the challenges in the global implementation of the PNR programme. Therefore, in line with the UNSC Resolution concerning the use of API/PNR data with full respect for data protection and privacy as well as human rights and fundamental freedoms for the purpose of preventing, detecting, and investigating terrorist offenses and travel recommended provisions, the draft updated SARPs include provisions that seek to ensure the use of PNR data while respecting human rights and fundamental freedoms, and to prevent any misuse of, and unauthorized access to, PNR data.
6. In addition, the draft update to the SARPS also includes an important provision for States not to inhibit or prevent the transfer of PNR data by an aircraft operator or other relevant party, nor sanction, impose penalties or create unreasonable obstacles on aircraft operators or other relevant parties that transfer PNR data to another Contracting State, provided that Contracting State's PNR data system is compliant with the Standards contained in Section D, Chapter 9 of Annex 9 of the Chicago Convention.
7. Taking into account the importance of the topic, the WCO participated as an observer in the ICAO meetings relating to the updating of the SARPs. The meetings included:
  - 1<sup>st</sup> ICAO PNR-TF Meeting in Cairo, Egypt, from 18 to 20 August 2019;
- 2.

- 2<sup>nd</sup> ICAO PNR-TF Meeting in Montreal, Canada, from 3 to 6 December 2019;
  - 11<sup>th</sup> ICAO Facilitation Panel (FAL-P) Meeting in Montreal, Canada, from 13 to 16 January 2020.
8. At these meetings, the WCO attempted to ensure that the SARPs sufficiently address the use of PNR data for Customs purposes.
9. At the 13<sup>th</sup> WCO/IATA/ICAO API/PNR API/PNR Contact Committee Meeting, held in October 2019, the ICAO Secretariat informed the Contact Committee about the work of the PNR-TF in updating the SARPs. WCO Members expressed the need to emphasize the use of PNR for Customs purposes in the proposed amendment of the SARPs. The ICAO Secretariat informed the Contact Committee that Customs administrations would have an opportunity to put forward their comments and inputs for the draft update of the SARPs to be considered by the ICAO ATC, by working together with their national civil aviation authorities in preparing replies to the ICAO State Letter.

## II. Intersessional development of ICAO PNR SARPs

10. The WCO Secretariat received a letter from the ICAO Secretariat, reference EC 6/3 – 20/14 dated 25 February 2020, indicating that the ICAO ATC, at the second meeting of the 219<sup>th</sup> Session on 7 February 2020, considered proposals for Amendment<sup>1</sup> 28 to Annex 9 “Facilitation” of the Chicago Convention.
11. On 28 February 2020, the WCO replied to the ICAO Secretariat with a recommendation for a text to be added to Article 9.24 (b) in the proposal, and a change of the term “Border integrity” to “Border security” in Chapter 1.A. (Definitions), as highlighted below:

Article 9.24 (b)	clearly set the purposes for which PNR data may be used by the authorities which should be no wider than what is necessary in view of the aims to be achieved, <u>such as the aims relating to entry, clearance, immigration, passports, customs, and quarantine</u> ; including in particular law enforcement and border security purposes to fight terrorism and serious crime;
Chapter 1.A. Definition: Border <b>integrity</b> security	The enforcement, by a State, of its laws and/or regulations concerning the movement of goods and/or persons across its borders

12. The ICAO letter and the WCO reply are appended as Annex to this document.
13. The purpose of the recommendation was to emphasize that the WCO’s Members are well placed to prevent, detect and suppress terrorism and serious crime, as well as to facilitate the cross-border movement of legitimate travellers. In addition, PNR data has been a very important tool for Customs purposes. This suggestion was in line with the Customs Co-operation Council Recommendation concerning the use of API and PNR for efficient and effective Customs controls.
14. This suggestion was also consistent with Article 13 of the Chicago Convention (entry and clearance regulations) which stipulates that : “*The laws and regulations of a contracting State as to the admission to or departure from its territory of passengers, crew or cargo of aircraft, such as regulations relating to entry, clearance, immigration, passports, customs, and quarantine shall be complied with by or on behalf of such*

<sup>1</sup> The draft update of the SARPs can be found in the Annex to ICAO letter EC 6/3 – 20/14, which is appended to this document. The current version of Annex 9 to the Chicago Convention is available on the ICAO website at <https://login.icao.int> (login is required).

*passengers, crew or cargo upon entrance into or departure from, or while within the territory of that State”.*

15. Access to PNR data is critical for detecting these threats while facilitating the movement of legitimate passengers across borders. Highlighting, in the SARPs, the important role of Customs and the use of PNR data for Customs purposes, would help to address this concern, particularly in those States that have yet to establish a PNR programme. The WCO expressed a concern that Governments may lose sight of the important role that Customs could play at the border, including control of the threat posed by terrorism and serious crime.
16. Following its reply to ICAO, the WCO sent another letter to all WCO Members, informing them of the WCO's reply to ICAO. In that letter, the WCO invited Members to work with Civil Aviation Authority counterparts on the development of the SARPs, to ensure that the above concern is addressed. The letter is appended as Annex to this document.

### **III. Conclusion**

17. The Permanent Technical Committee is invited to:
  - take note of intersessional developments related to the updating of the ICAO SARPs on PNR; and
  - provide guidance as appropriate.

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