

**THE INTRODUCTION OF A 'CONFORMITY CHECK' IN BELGIUM (10.06.2020)**

This note intends to give insight in the Belgian experience on the introduction of the so-called 'conformity checks' at Belgian airports. It highlights the main drivers to introduce such a check, as well as the results from an EU expert meeting that has been organized by Belgium in 2018. This note is not exhaustive and acts as an introduction to the presentation that will be given by Mr. Gunter Ceuppens during the hearing in the German Bundestag on June 15<sup>th</sup> 2020.

**i. Introduction**

Living in an era of enhanced security and new regulatory demands, we should close the existing gaps whilst taking into account the proportionality of the implemented measures. Collecting Passenger Name Record (PNR) information without certainty about the correctness of the passenger's name and the accuracy of the passenger list, neutralizes the effectiveness of the use of PNR by EU Member States. The introduction of a conformity check by all Member States would provide air carriers with the same regulatory requirements and consequently reduces the risk of travel under false pretense and avoidance of detection significantly.

This conformity check is understood as "the comparison between a passenger's name on his/her boarding pass and the name on his/her identity document by the carrier, taking place at the gate". It should not be understood as an identity or border check and therefore poses not an obstacle for the free movement of persons within the EU and the Schengen area. The free movement is one of the European core principles and should be protected as such.

The Member States should be fully aware of the potential impact additional measures could have on the air carriers. However, several air carriers already perform checks in their existing business processes and adapted their IT systems to their business requirements. Therefore conformity checks are already performed in a large majority of Member States, even if not implemented as a security measure.

**ii. EU Expert Meeting on the Introduction of a Conformity Check (2018)**

In the framework of the Justice and Home Affairs Council, the EU Home Affairs Ministers from 16 Member States decided in early 2018 to hold a high-level expert meeting on the introduction of an EU-wide conformity check. Given that the Member States had to transpose and implement the EU PNR Directive by the end of May 2018 and because of the political decision to also collect PNR data for intra-EU flights, the Member States possessed of an important additional instrument in the fight against terrorism and serious crime. In order to make effective use of this instrument, we needed (and still need) however the passenger data to be accurate



and up-to-date. Without the collection of Advance Passenger Information (API)<sup>1</sup> data for intra-EU flights (or similar), additional measures should be taken as part of a more integrated approach.

During the expert meeting, Member State senior experts<sup>2</sup> were invited to share best practices and take part in the discussion. The majority of them expressed their conviction about the added value of additional checks at airports, certainly when seen in relation to the collection and analysis of passenger data. Moreover, given new initiatives in the field of border control (e.g. Entry Exit System, ETIAS) an obligatory intra-EU conformity check would be a reasonable next step to enhance the security architecture.

A preparatory questionnaire was filled out by 12 out of the 16 invited Member States. It became clear that those having in place already a conformity check (e.g. BE, FR, LU, HU, ...) used different legal bases. Whereas some Member States have national legislation in place related to PNR, some others used national legislation in the field of aviation security. Regulation (EC) 300/2008 has been named several times as this regulation allows States to take more stringent measures where necessary.

During the meeting both strong arguments in favour as well as views on potential weaknesses were expressed. A short overview:

- In relation to the analysis of passenger data, a conformity check is seen as an important development allowing to narrow down the existing security gaps. Performing a check should improve the quality of data processed by relevant authorities, contributing to effective operation of the EU PNR system and strengthening the security architecture.
- Taking actions at airports on the basis of accurate/wrong data could lead to an increase of 'unnecessary' actions by law enforcement authorities (e.g. border guards) and more workload. A conformity check could lead to more effective targeting and thus less workload.
- Taking actions on the basis of inaccurate/wrong data could be a threat for the passenger's privacy in that sense that it is in the interest of the passenger that targeting is done on the basis of correct and accurate data. Inaccurate data could lead to perverse effects for innocent people and represents a more intrusive impact on data protection.
- As practice shows that PNR files are not always one hundred percent correct, having a conformity check in place could be in the interest of the authorities in order to have a confirmed list of passengers in case of e.g. aircraft accidents.
- Although clear and complete statistics are not available, experts from Spain and Luxemburg witnessed about proven results.

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<sup>1</sup> Whereas PNR is non-verified reservation data (e.g. name, contact details, payment information), Advance Passenger Information (API) is verified information coming from identity cards or passports (e.g. name, nationality, document number, date of birth). Both data sets combined enable authorities to effectively analyse the data received.

<sup>2</sup> Invitations have been sent to the members of the 'G16 Breakfast Meeting', an informal gathering of Ministers in the framework of the JHA Council. Member States present were Germany, Ireland, The Netherlands, Poland, Spain, UK, Sweden, Austria, Finland, Luxemburg, Italy and Belgium.



- According to some Member States, taking only an aviation security point of view into consideration performing conformity checks does not provide any identifiable added value.
- When using the boarding pass to perform a check with an identity document, a date of birth is missing. An identity document could moreover be falsified.

In addition to above arguments, also following elements were raised during the discussion:

- In general, passengers feel more secure if additional checks have been performed at the airport. Several delegations witnessed that passengers complain about not performing a conformity check.
- The conformity check should not be linked to aviation security, but should be seen as a broader measure. Additional checks cannot offer 100% result but they can add a complementary layer (e.g. we have more certainty on who is on the airplane, also in the interest of the airline).

As a conclusion, the experts acknowledged :

- a. Reliable passenger data are essential. In order to obtain this, an EU-wide solution is necessary.
- b. The conformity check should be linked both to aviation security and the analysis of passenger data.
- c. On the longer term, the revision of the API directive could be an opportunity. The European Commission should reflect upon including intra-EU API collection in their proposal<sup>3</sup>.
- d. On the short term, we should look for specific measures to make passenger data more reliable. Therefore we should envisage all possibilities, including introducing an EU-wide conformity check.

### iii. The Conformity Check in Belgium

The conformity check has been introduced in Belgium both by the legislation on the use of passenger data (December 25<sup>th</sup> 2016), transposing the EU PNR Directive (2016), as well as in the National Aviation Security Programme (2018).

The PNR legislation gave the authority to the newly established Belgian Passenger Information Unit (BelPIU) to collect, store and analyse Advance Passenger Information (API) and Passenger Name Records (PNR) in the fight against terrorism and serious crime and to combat illegal immigration. The BelPIU is part of the Federal Public Service Interior Affairs' National

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<sup>3</sup> In the meanwhile, the Commission has published a study on the evaluation of the API Directive, briefly mentioning the introduction of a conformity check. <https://op.europa.eu/en/publication-detail/-/publication/3ef3a394-5dcb-11ea-b735-01aa75ed71a1/language-en/format-PDF/source-search>



Crisis Centre and works together with four security and intelligence services (Police, Customs, State Security and Military Intelligence) which have all seconded staff to the Unit.

Given the recognition of free movement as a fundamental principle, Belgium believed at that time (and still believes) that maintaining this free movement could be done in conjunction with much needed additional security layers<sup>4</sup>. A first important step had been taken by the EU Home Affairs Ministers in agreeing upon the intra-EU collection of PNR data. This decision and its implementation has already delivered some remarkable results<sup>5</sup> in Belgium in the past two years.

The collection of intra-EU PNR (note that API is not available for intra-EU flights in most cases) also implied a (serious) lack of data quality since names are sometimes inaccurate and a date of birth is often missing. Both are much needed to conduct effective analysis (e.g. when comparing a passenger's name with the national police database) and have a higher return on investment. Reflecting about possible solutions for inaccuracies in passenger names, the government included the conformity check in the PNR legislation. More concretely, the carrier would be obliged to perform a check between the name and surname on a passenger's boarding pass and an identity document, both for inbound and outbound flights, from the moment they are sending passenger data to the BelPIU<sup>6</sup>. This additional check should support the obligation for carriers to send correct, accurate and up-to-date information once boarding has completed.

In order to maintain equality among carriers and to assure every carrier would conduct the same check even before the transmission of data for that particular airline would enter into force, the government has also decided to write the measure in the National Aviation Security Programme (NASP) on the basis of Regulation (EC) 300/2008. Likewise to the PNR legislation, freedom is given to the carrier to decide what to do in case of non-conformity. In practice, most carriers have clauses in their 'terms & conditions' to warn passengers that fines may occur in case boarding passes should be re-issued and/or reservation data should be modified.

Although the optimization of the use of passenger data was the main driver for the introduction of the conformity check in Belgium, some other arguments need to be taken into account. Think for example about the case of an aircraft accident where crisis authorities would like to know exactly who's on board of the airplane. Also in the framework of the current health crisis it is of utmost importance that (health) authorities know for sure who was on board of the airplane in case a Covid-19 case would have been detected.

It is worth mentioning the industry resistance during the consultation process of the PNR legislation. The industry had some very legitimate questions about the operational impact of such an additional check. Criticism evaporated however rapidly after implementation and

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<sup>4</sup> Passengers swapping boarding passes or criminals using false names are only two examples of much used modi operandi to avoid checks.

<sup>5</sup> A significant amount of the total targeted passengers can be found on intra-EU flights. Those passengers would otherwise not have been caught in the absence of an intra-EU border check or other security mechanism.

<sup>6</sup> The BelPIU is following a gradual implementation process when it comes to connecting carriers to the government's IT system. As this is a very time-consuming matter, still not all carriers have been connected to the system.



claims such as a seriously increased boarding time (x3) turned out not to be proven. Some practical issues remained (e.g. long Spanish names, passengers using abbreviations of their name, the use of other documents such as driver's licenses in countries like Sweden, ...), but the government's administration decided to take a pragmatic approach and make sure the principles as laid down in the legislation are followed by the carrier, without having to cause too much burden on them.

As we still see flaws in intra-EU data we receive from several carriers, we can expect the conformity check not to be done in a correct manner by every carrier. Although we prefer diplomacy above financial punishment, we should increase inspection and support capacity as to make sure every carrier has implemented the rules as needed. Moreover, passengers should continuously be stimulated to fill out their reservation data in an accurate way in order to avoid problems for the airline and themselves.

#### iv. Conclusions and lessons learned

Industry has laid down some very legitimate questions about the operational impact and burden to passengers as a consequence of the introduction of a conformity check. Although this measure does not close existing security gaps one hundred percent, it is proven to be an effective additional layer in the country's security architecture. It remains difficult to provide hard evidence or statistics, but practice has proven the measure's added value with direct and indirect positive impact on various stakeholders. PIU's receiving higher data quality means more accurate targeting, especially for intra-EU flights. With more effective targeting, border police is able to perform less unneeded gate checks, by consequence passenger flows are less disrupted and false positives can be avoided which is an improvement on the passenger's data treatment.

Following the Belgian experience, passengers and travel agencies must be strongly encouraged to fill out reservation data in a correct way. Secondly, air carriers should be given the freedom in the way they organise this conformity check and decide what to do with a passenger in case of non-conformity. Thirdly, a pragmatic approach is needed when it comes to the types of identity documents.

Finally, legislation should be future-proof. It should be made possible for the industry to innovate without too much burden. Legislation should remain open for the use of (biometric) e-gates or similar technologies at check-in and boarding gates. When drafting legislation, one should also assure that there is a certain coherence in regulatory requirements with other EU Member States. An EU-wide approach on the introduction of a conformity check remains the best option in order to close existing gaps as much as possible.



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