

Annex

- The amount of personal data requested must be proportional to the purpose of the processing. In a first insight, what can make the difference in this case could be the price formation processes. If systems based on the NDC business model, as some stakeholders consider, aim to build tailored price offers based on customer information, a certain amount on data would be needed, regardless other considerations, as opposed to the current practice based on predefined fares mainly related to objective criteria like availability of seats, travelling days, early purchase, etc. that usually does not require any sending of personal data for the search. In any case, there are doubts whether – considering the categories of data listed in Resolution 787 – the amount of data requested might be considered proportional according to the declared purpose.
- According to article 7 of Directive 95/46, personal data shall only be processed under at least one of the legal grounds listed in that article. One of the applicable grounds could be Article 7(b) – performance of a contract – but this in principle could be only applicable when requesting a specific offer from a specific airline, since it could be covering processing that takes place prior to entering into a contract. In the case of a general search request not limited to a specific airline, it is questionable whether the same reasoning may be applicable. In the case of consent, account should be taken on the need to ensure that is given freely, unambiguously and expressly. Critical factors in this case would be, first, to ensure the absence of significant negative consequences if the individual does not consent as well as the quality and accessibility of the information provided in order to get the consent. As mentioned before, the possibility of the customers being “pushed” to use authenticated requests if they detect that offers resulting from anonymous searches are unbalanced in terms of higher fares and less information when compared with the authenticated ones cannot be ruled out.
- In the current model, agents using a GDS are considered data controllers¹ for the personal data collected in the course of the activities for the purpose of making reservations or issuing tickets for transport products. With the new model, there could be a substantive increase on the role played by the airlines during the booking process. On one hand, they could be in the position of defining the scope and means of the data processing; on the other, it would be possible that the ownership of some elements – notably the Passenger Name Record (PNR) linked to a booking – could be transferred from the GDS to the airlines. In both cases, airlines could be deemed data controllers.
- In absence of more detailed information, it seems that the booking process would be moving from a one to one transaction model – customer-GDS or customer-airline – to a one to many model – customer to a group of airlines serving the same route – implying that all the airlines would be processing the data included in the authentication request. That said, it should be consider the possible outcome of this practice in terms of further data processing, data retention, information to the customer and possible transfers to third countries outside EU.
- Last, but not least, data collection and processing practices associated to the implementation of the NDC initiative in its full potential could lead to discriminative practices derived from profiling. In that sense, possible discrimination practices could emerge from the fact that a particular customer not included in an airline database

¹ Article 11 Regulation 80/2009

because his / her choice is to remain anonymous and, for that reason, higher fares are offered, or, alternatively, different fare offers derived from deciding that all customers with a particular attribute have to pay more than those not presenting the same characteristic. In that sense, it has to be taken into account that, even in presence of a legitimate data processing according to art. 7, data collection and data processing need to be in line with art. 6 in terms of necessity and proportionality. This potential drawback, even though is not exclusive to NDC initiative, can represent a serious risk in terms of protection of data protection rights.