Ministerio del Interior

By e-mail to ses.normativa@interior.es

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Regarding the Royal Decree 933/2021 of October 26th.

Together the five Nordic travel agency and tour operator associations in Norway, Sweden, Finland and Denmark represent more than 840 tour operators and travel agencies.

In total about 4.8 million travellers go to Spain every year from these countries.

On August 1st and then again September 3rd, 2024, we took the liberty of contacting the Ministry of Interior raising our concerns in relation to the much-discussed Royal Decree 933/2021 of October 26th.

As we unfortunately did not receive any response to our inquiries, we are pleased that the Ministry of Interior now has opened a public consultation with the possibility of submitting our comments on the decree.

We would like to emphasise that we fully understand the importance of the fight against organised crime and terrorism. However, in its current form, the Decree goes much further than necessary and raises a wide range of practical and legal issues for both our industry and our customers.

In continuation of this, we also fear that the implementation of the proposal in its current form will have significant negative consequences for Spanish tourism.

General considerations and concerns

Royal Decree 933/2021 is disproportionate and unnecessary in relation to the purpose of the data collection, as it goes beyond the fight against terrorism and organised crime.

It is our opinion that a system, according to which the obligation to communicate the data of people travelling to Spain would only apply to accommodation providers and vehicle rental companies seems to be sufficient to fulfil the purpose of decree.

We find it difficult to see the necessity for tour operators and travel agents to be included under these regulations and thus be required to collect and transmit a wide range of both personal, confidential and transactional data for travellers.

According to the decree, it is ultimately still the accommodation providers and vehicle rental companies that must collect and transmit the required personal information to the respective authorities.

This makes sense, as they are the ones delivering the final services to the travellers and have the direct contact with the travellers while they are enjoying Spain.

Given this context and considering the purpose of the Decree, as mentioned above, we believe it is both unnecessary, impractical and disproportionate to now add an additional and entirely redundant link, being the tour operators, in the information chain for the transmission of personal data.

On top of that, the Decree will impose significant and unnecessary additional administrative burden and costs for companies (e.g. hotels, travel agents, tour operators, etc.) de facto increasing the price of holidays in a highly competitive market.

It will lead to unnecessary duplication of data collection and processing by tour operators when the obligation already applies to Spanish hotels and car rental companies.

Furthermore, it will not provide the Spanish authorities with the required personal and transactional information when visitors to Spain organise their own trips without an intermediary or a tour operator.

It is therefore our opinion that a system, according to which the obligation to communicate the data of people travelling to Spain would only apply to accommodation providers and vehicle rental companies seems to be sufficient to fulfil the purpose of the Decree.

In addition to the disproportionate administrative burden on tour operators, this will lead to a distortion of competition between direct and indirect bookings.

Finally, and as mentioned, we also fear, that travellers will be reluctant to choose Spanish destinations in the future if such an extensive collection of data is in place and will prefer less burdensome alternatives.

The implementation of the decree will undoubtedly create worry and concern among the travellers regarding personal information which must be shared with the Spanish authorities.

Besides lots of questions in the booking dialogue and reluctancy in sharing personal and transactional information, some clients may very likely consider other destinations.

Practical challenges

Most of the requested data required by the Decree are not collected by the tour operators in their booking systems. Consequently, they do not have systems in place to collect and transmit the requested data and will not be able to develop such systems on a short notice taken into consideration, that the decree has already entered into force.

The platform for collecting the data is only available in Spanish, although there still is no formal clarification on whether the Decree will apply to companies established outside of Spain.

If, contrary to all expectations, it should turn out that the Decree also applies to companies established outside Spain, it is necessary to clarify the following matters:

- *Will the Spanish authorities provide access to systems that are compatible with tourism business operators own booking systems?*
- *The Spanish registration system for tourism business operators and the Spanish reporting system for personal data and transaction data will only be available in Spanish. Will translations be provided?*

Legal considerations

It is our opinion, that the decree may conflict with several provisions of the General Data Protection Regulation (EU) 2016/679[1] and Directive (EU) 2016/680[2]). Some of the points that we are concerned about are described in the following.

Below you will find a more detailed legal analysis of our concerns with the Royal Decree. In summary, we are concerned about the following:

To date, no tour operator or tourism authority outside of Spain has received any kind of information on how the requested data in practice should be sent, processed and transferred to the Spanish authorities.

As a result, tour operators will not be able to comply with the GDPR's information requirements and therefore will not be able to prepare a DPIA (Data Protection Impact Assessment) as a basis for the obligations of the Regulation (art. 35).

[1] Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC
[2] Directive (EU) 2016/680 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data

The companies also risk being fined and sanctioned if the national authorities consider that the Decree's requirement for mandatory (double) collection of personal data is in breach of the GDPR.

From what we know Spanish companies have also mentioned that the is in contradiction with the Payment Regulations: The obligation to collect and report payment-related data in accommodation transactions appears to contradict the existing Spanish regulations on payment services, as set out in Royal Decree-Law 19/2018, which transposes the PSD2 Directive.

All the above raise the following questions:

- *How will the Spanish authorities ensure that the requested data is not collected by several obliged parties to avoid unnecessary processing and disclosure of personal data among several data controllers?*
- *When can the travel companies be expected to receive information about how the requested data is processed, stored and deleted?*
- *How are the rights of the data subject secured in relation to data portability, objection, rectification and deletion?*

There is no need to collect such a large amount of data.

According to annex 1 and 2 of the Decree, the number of data to be collected will, as already mentioned above, be enormous and in our opinion very invasive to the industry.

While the Royal Decree indicates in its preamble that the purpose for the collection of the data is to better fight against terrorism and organised crime, article 7.1 of the Decree seems to indicate that these data will be covering a much wider purpose.

Art 7.1 provides that the; *"... data generated in this royal decree will be kept in the Secretary of State for Security. Your treatment may only be carried out by the Security Forces and Bodies in the performance of their respective powers in the field of prevention, detection and investigation of the crime assigned to them…".*

Looking at the wording of the article 7.1 it seems likely that the data generated may be used for purposes other than fight against terrorism and organised crime and applied to more common offences which in our opinion seems disproportionate and worrying.

The Decree seems to conflict with European data regulations

It follows from article 5.3 in the Decree that the data in the computer registry must be kept for a period of three years from the end of the contracted service or provision.

A fixed period of 3 years seems in our opinion disproportionate, especially in regard to the fact, that according to article 4.2 in the Decree the collection and processing of data even seems to apply to minors under 14.

Having gone through and analysed the required information contained in Annexes 1 and 2 of the Decree, it is our clear belief that the amount of information is disproportionate with the purpose of the Decree.

Consequently, and as already mentioned above, the Decree may conflict with several provisions of the European data protection regulations.

- The purpose laid down in article 7.1 of the decree seems too vague and too far reaching to be considered as *explicit* as required by article 4.1(b) in Directive (EU) 2016/680 and the corresponding article 5.1(b) in Regulation (EU) 2016/679.
- The variety and far-reaching amount of data collected, applicable even to minors is clearly excessive in relation to the vague purpose laid down in article 7.1 of the Decree.
- In our opinion, much of the required data does not appear to have any direct *relevance* to the achievement of the Decree's stated purpose. Consequently that seems to infringe art 4.1(c) in Directive (EU) 2016/680 and the principle of data minimization in article 5.1(c) in Regulation (EU) 2016/679.
- It is also questionable whether a data retention period of 3 years, when collected on minors as well is considered *necessary* as provided in art 4.1(e) Directive (EU) 2016/680 and the corresponding article 5.1(e) in Regulation (EU) 2016/679.
- Nor does it seem clear how to ensure that the collection and processing of the required data meets the requirements of Article 5 in Directive (EU) 2016/680, which is to ensure appropriate time limits for the deletion of personal data and regular review of the need for storage of the personal data in question.
- This wide and automatic collection of all travellers data also raises the question of the legality of the Decree in the light of the ECJ Case C-817/19 of 21 June 2022. In this case where Member States demanded to get PNR data from airlines on all intra-EU flights, the ECJ ruled that a wide personal data collection is only justified in case of an apparent terrorist threat, must be

time-limited, and otherwise such policy must be applied in a tailored way to certain flight routes for which there are relevant indications.

The Decree should be repealed or revised

Overall, we believe that the need for and requirements as set out in the Decree should be reassessed to ensure that the amount of data collected is adequate with the purpose and complies with data protection rules.

A more targeted and proportionate approach would be to limit the information requirements to what is strictly necessary.

Finally, we are of the clear opinion that intermediates such as tour operators and travel agencies should be clearly **exempted** from the obligation to collect the data in question on behalf of the accommodation and car rental companies.

The responsibility for collecting, processing and disclosing the data in question should lie solely with the accommodation and car rental companies, which can properly collect the necessary data when travellers arrive at the destination.

There is no need to introduce rules to increase the volume of cross-border transfers of personal data, and certainly not to the volumes and scales required by the Decree.

It must be in the interest of all parties that there is no unnecessary regulation, that the rules comply with EU-legislation and that the rules do not go beyond what is required to fulfil the purpose of the decree.

Although the above concerns are primarily of a legal nature, it is important for us to point out that the Decree is just as much a cause for concern from a purely commercial point of view. As mentioned, it will be costly and time-consuming to have to collect the required data in question.

Moreover, as mentioned above it will be difficult to explain to travellers why they must provide so much personal and confidential information as required by the Decree when booking a holiday to Spain.

There is thus a risk that some travellers will choose not to travel Spain or consider it their preferred travel destination, with the fatal consequences this will have for the entire tourism and experience industry.

Against this background, we must strongly urge the Ministry to either repeal or revise the Decree before it enters into force.

As mentioned, in our view, tour operators and travel agents should at least be completely excluded from the scope of the Decree and, moreover, it should be ensured that the Decree is more in line with European data protection rules.

If the Ministry assesses that the above proposed solutions are not realistic, an alternative solution could be to introduce a simplified and digital self-service system for the travelers.

For example, it could be in line with the system used when applying for ESTA (Electronic System for Travel Authorization) for USA or like the Greek PLF (Passenger Locator Form) which all travelers themselves had to complete before entering Greece during the pandemic.

This will lessen many of the financial and administrative burdens imposed by the Decree on the undertakings concerned. At the same time, such an entry system will not create the same personal data legislation challenges, as the amount of data collectors and data processing will be significantly reduced.

If the above gives rise to any kind of elaboration, we are of course available.

Yours respectfully,

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