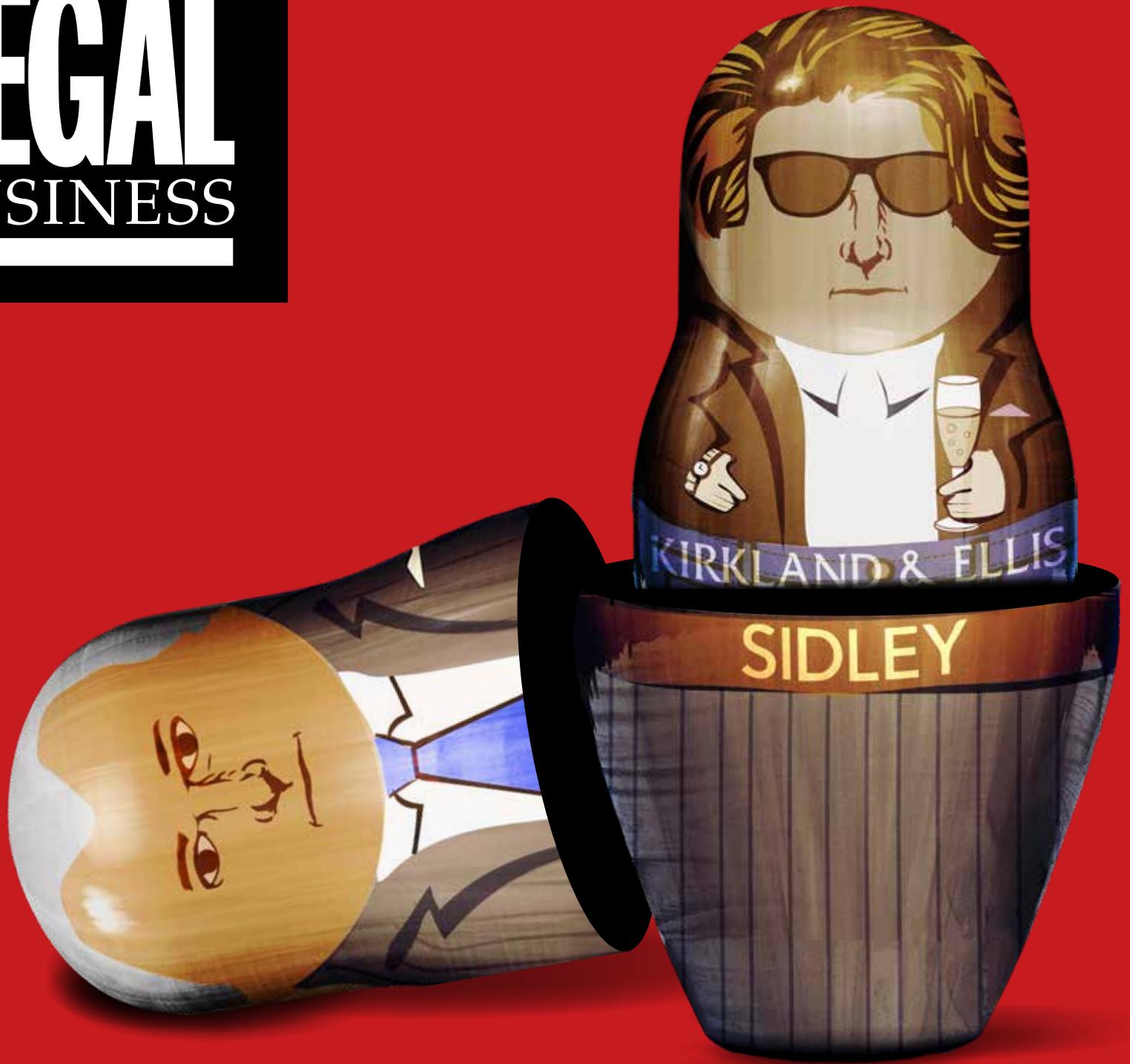


LEGAL BUSINESS



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Passenger data – should airlines be worried?

Marília Frias and Carolina Moniz Pina of VdA outlines Portugal's new PNR Law

With personal data protection being the topic of 2018 in the EU, airlines have been put in a difficult position regarding passenger data.

In the normal course of their business, for enabling reservations, carrying out the check-in process and managing flights, airlines need to process personal data provided by passengers and collected by themselves, commonly referred to as the passenger name record (PNR).

PNR data includes information such as: name, contact details, dates of travel, itinerary, frequent flyer information, travel agent, means of payment, seat number and baggage information.

The European legislator has decided to approach PNR data as a mechanism to prevent, detect and investigate terrorism and serious crime (such as drugs, human trafficking and child sexual exploitation), aiming to safeguard the EU's safety, through the enforcement of Directive (EU) 2016/681 of 27 April 2016.

However, airlines are still subject to their obligations as data controllers (especially under the General Data Protection Regulation (GDPR), and the processing of data must comply with the principles of necessity and proportionality, which is not always an easy balance to achieve as the processing of PNR involves mass-collection of personal data.

To comply with this directive, Portugal has published Law 21/2019 of 25 February 2019 (PNR Law), which regulates the transfer and processing of PNR data by airlines, applying to flights from a member state or third country, or to a member state or third country.

According to this directive, member states must establish specific local entities responsible for the collection, storage and processing of PNR data – the Passenger Information Units (PIUs) – which will significantly enhance the existing cross-border law enforcement co-operation, allowing for more preventive and proactive actions. In Portugal, the PIU is the Passenger Information Office (GIP) and the operation of the GIP is carried out by members of different public forces.

GIP will operate within the framework of the single point of contact for international police co-operation (PUC-CPI) and under its management.

Airlines must transfer PNR data through a push method (which offers a higher level of protection, as airlines transfer ('push') the required data to the competent authority, allowing them to retain control of what data is provided) to GIP's database.

Regarding code-shared flights, the obligation to transfer the PNR data of all

Although the date of entry into force of the PNR Law was set to the day after its publication, its application still relies on the entry into force of the legal regime regarding the protection of individuals within the processing of personal data by the competent authorities (which transposes Directive 2016/680 to Portugal), currently being discussed at the Portuguese parliament.

'In the event of violation of the PNR Law, airlines may pay fines of up to €100,000 per trip.'

passengers on said flight will fall on the airline that operates it.

Where an extra-EU flight has one or more stop-overs at airports of different member states, airlines will transfer the PNR data of all passengers to the PIUs of all the member states concerned.

Notwithstanding, from a data protection standpoint, PNR data collected under these terms can only be processed for the purposes of prevention, detection, investigation and prosecution of terrorist offences and serious crimes. Besides, airlines are subject to several limitations to ensure adequate protection of this personal data.

The PNR Law prohibits the collection and use of special categories of data, and provides for the retention of this personal data in GIP for a maximum of five years (after being transferred to it). Thus, after this period, the data should be deleted. Nonetheless, after an initial period of six months, some elements that allow direct identification of the passengers shall be masked out.

Moreover, GIP will have a data protection officer, who will be responsible for advising and monitoring the way PNR data is processed.

In the event of violation of the rules set forth in the PNR Law, as above mentioned, airlines may pay fines of up to €100,000 per trip, applied by the Foreigners and Borders Service.

On the other hand, the enforcement of the PNR Law regarding provisions on the protection of personal data will be made by the Portuguese Data Protection Authority.

This law is a very important enforcement tool that combines political, legal and practical aspects, towards effective co-operation between member states, through the respective PIUs. So, considering the public interest underlying these rules, such collaboration should be enhanced.

For more information, please contact:

Marília Frias,
information,
communication
and technology

T: +35 121 311 3400
E: mxf@vda.pt



Carolina Moniz Pina,
information,
communication
and technology

T: +35 121 311 3400
E: cmz@vda.pt



Vieira de Almeida
Rua Dom Luís I, 28
1200-151 Lisboa
Portugal

www.vda.pt