

DATA PROTECTION & INTERNATIONAL CARRIAGE BY AIR – OUTCOMES FROM THE 39th SESSION ICAO LEGAL COMMITTEE

1. INTRODUCTION

1.1 Providing safe, comfortable, and efficient carriage by air requires air carriers to also protect and secure the personal information of over 12 million passengers that travel on almost 130,000 flights globally each day.

1.2 This must be done in strict compliance with 140 national or supranational data protection and privacy laws. These laws often apply outside their home state, they may conflict and may not recognize foreign laws as legal basis for transferring such data across borders. Such laws were never designed with the unique regulatory and operational characteristics of international civil aviation in mind.

1.3 Save for some limited maritime activity (i.e. cruising and ferry services) and rail transport (mainly in Europe), aviation is unique in physically transporting passengers from one jurisdiction to another. This requires passengers' personal data to be shared with other organizations that may need to process or use the data to deliver passenger services including airlines, airports, ground handlers, travel agents and border authorities.

1.4 Airlines respect the sovereign right of governments to introduce data protection laws and they do not seek any exemptions from them. However, with more than 4 billion passengers traveling annually, the practical task of ensuring which data protection laws apply to a given itinerary is becoming increasingly challenging.

1.5 Air carriers also find themselves increasingly impacted by legal and practical differences between data protection laws, for example relating to the transfer of passenger name records (PNR). We have many examples where airlines have threats of significant financial penalties or even the removal of operating licenses given under air service agreements because the laws in their home State conflict with destination countries. Airlines faced difficulties during the COVID-19 pandemic when some States were requesting that they transfer certain personal data that was prohibited by laws in their home jurisdiction.

1.6 IATA also notes that there are technological developments such as digital travel credentials that offer significant benefits in terms of security, facilitation, and the ability of individuals to control what data they share. However, the adoption of such technologies is predicated on data protection laws in different jurisdictions.

1.7 Facilitation tools that rely on the use of personal data can simplify and enhance security and efficiency in the circulation of people and goods. Thus, the legal basis for their use needs to be well founded. However, the issues relating to data protection and interaction by air extend far beyond Facilitation. For this reason, IATA believes situation is such that there is an urgent need for ICAO to take a holistic review of the interaction between international carriage by air and national data protection and privacy laws. This will help avoid future issues and ensure that no States are left behind.

2. DISCUSSION

2.1 IATA has diligently raised the issues outlined above to the attention of ICAO member States over the past 3 years in a number of fora, including at the 41st Assembly¹ and the 13th Facilitation Panel².

1 See https://www.icao.int/Meetings/a41/Documents/WP/wp_073_en.pdf

2 See https://www.icao.int/Meetings/FALP/Documents/FALP13-2024/FALP13_WP32.pdf

2.2 Most recently IATA Working Paper WP/6-3³ to the 39th ICAO Legal Committee in April 2024. The paper called for ICAO to include the issue on the work program of the Legal Committee and for the establishment of a multi-disciplinary group to study the issues, identify possible mitigations and to develop high level aviation-specific guidance.

2.3 IATA also published a White Paper⁴ in response to requests from States attending the global Seminar on data protection and international carriage by air held in cooperation with ICAO in September 2023.

2.4 The majority of intervening States spoke in support of the proposal during LC/39 as reflected in the Draft Report⁵ of the Legal Committee. The outcomes from the Legal Committee will be discussed at the Council at its 233rd Session in late October.

2.5 IATA notes that seven APAC States (namely Australia, China, India, Japan, Korea, Malaysia and Singapore) are members of the ICAO Council (2022-2025).

2.6 We respectfully invite APAC States on the Council to endorse the proposal relating to data protection from the 39th ICAO Legal Committee when it is discussed at the 233rd Session of the ICAO Council on 28 October.

3. ACTION BY THE CONFERENCE

3.1 The Conference is invited to:

- a) Note the information provided in this Discussion Paper
- b) Encourage the seven APAC States that are members on the ICAO Council to support the proposal on data protection from the Legal Committee at the 233rd Council Session.

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3 See https://www.icao.int/Meetings/LC39/Documents/LC39-WP%206-3%20INTERNATIONAL%20CARRIAGE%20BY%20AIR%20AND%20DATA%20PROTECTION%20LAW_S_final.pdf

4 See <https://www.iata.org/contentassets/da67b41b565c4bd88d5944b136cc8d15/data-protection-white-paper.pdf>

5 See https://www.icao.int/Meetings/LC39/Documents/LC%2039_Item%206_E.pdf