



WORKING PAPER

LEGAL COMMITTEE – 40TH SESSION

(Montréal, 26 – 30 October 2026)

Agenda Item 2 Consideration of the General Work Programme of the Legal Committee

**INTERNATIONAL CARRIAGE BY AIR
AND DATA PROTECTION LAWS**

(Presented by the International Air Transport Association)

1. INTRODUCTION

1.1 IATA welcomes the work undertaken by the Secretariat Study Group on Interactions between International Air Carriage and Data Protection Laws (SSG-DPL) and the conclusions and recommended actions set out in the Appendix to Working Paper LC/40-WP/2-2.

1.2 IATA has previously raised before the ICAO Assembly and Legal Committee² the difficulties arising from the interaction between international carriage by air and divergent data protection laws. At its 39th Session, the Legal Committee agreed to request the Council to include this subject in its Work Programme, following which the SSG-DPL was established. IATA has participated in the work of the SSG-DPL.

1.3 The work of the SSG-DPL, and in particular the results of its legal survey, provide an important basis for the next phase of ICAO's work. IATA considers that the outcome of the survey demonstrates the need for practical guidance to assist States in taking account of the particular characteristics of international carriage by air when developing or adapting their national data protection frameworks.

2. OUTCOME OF THE LEGAL SURVEY

2.1 As described in Working Paper LC/40-WP/2-2, the SSG-DPL launched a targeted legal survey of Member States and industry to map the types of data collected, processed, retained and transferred under national laws and to identify the principal challenges arising from their interaction with international carriage by air. The survey generated a significant level of engagement, with a total of 95 responses received, providing a substantial body of information on which to assess the issues across jurisdictions.

¹ English, Arabic, Chinese, French, Russian and Spanish versions provided by the International Air Transport Association

² See **LC/38-WP/7-1**, *Privacy Laws and International Carriage by Air* (presented by IATA); **A41-WP/73**, *International Carriage by Air and Data Protection Laws* (presented by IATA); and **LC/39-WP/6-3**, *International Carriage by Air and Data Protection Laws* (presented by IATA).

2.2 The breadth of responses provides a strong basis for assessing the treatment of air transport-related data across jurisdictions. Importantly, the results reveal a high degree of fragmentation and divergence across national legal systems. Significant differences remain in relation to data retention periods, cross-border transfer requirements and institutional responsibilities, with as many as half of the practical issues raised by respondents appearing to relate to the interaction of different legal requirements across jurisdictions.

2.3 The survey further confirms that international air carriage operates at the intersection of multiple legal regimes, including aviation security, border control, public health and data protection laws. General data protection legislation may apply alongside sector-specific requirements, particularly those relating to Advance Passenger Information (API) and Passenger Name Record (PNR) data. This can result in legal complexity and potential conflicts of obligations for stakeholders.

2.4 The outcome from the responses is not limited to differences in legal rules. The survey also identifies practical and technical challenges, including system interoperability, data quality and transmission issues, cybersecurity risks and limited stakeholder awareness. The SSG-DPL observed that many of these challenges are linked to the lack of harmonization and interoperability between legal regimes and technical standards.

2.5 In IATA's view, the survey is significant because it moves the discussion beyond the identification of potential difficulties and provides evidence, drawn from Member States and industry, of the extent and nature of the divergence as it affects international carriage by air. It demonstrates that, notwithstanding existing regional and international initiatives, material differences remain in how data protection requirements apply to international carriage by air.

3. THE NEED FOR ICAO GUIDANCE

3.1 IATA supports the conclusions and recommended actions of the SSG-DPL. In particular, IATA considers the development of ICAO guidance material to be an appropriate, practical and proportionate next step in this work.

3.2 International carriage by air is inherently cross-border in nature. Passenger data may need to be collected, processed or transferred between air carriers, partner airlines, service providers and government authorities in different jurisdictions as an integral part of a single international journey. Accordingly, differences between national data protection frameworks have consequences extending beyond ordinary questions of domestic compliance: they may affect data flows that are integral to international carriage by air and the effectiveness of governmental requirements.

3.3 IATA recognizes, as does the SSG-DPL, that data protection laws remain within the responsibility of States and extend beyond the air transport sector. ICAO guidance need not seek to establish a uniform global data protection regime, create new rules or displace national or regional frameworks. Indeed, the SSG-DPL has recognized the present difficulty of establishing a global international legal framework in this area.

3.4 It is precisely for this reason that a guidance document represents an appropriate response. It would preserve States' regulatory competence while providing for a common air transport-specific reference point to assist States in considering the international (i.e. inherently cross-border nature) and operational implications of their data protection requirements. Such an approach is consistent with ICAO's broader practice of developing aviation-specific policies and guidance in areas that intersect with wider

national regulatory frameworks, including those on taxation, charges and economic regulation.³ The fact that data protection extends beyond the air transport sector therefore does not preclude the ICAO from providing guidance on its particular application and implications in the context of international air transport.

3.5 The survey has now provided a substantial evidential basis upon which such guidance can be developed. The objective would be greater practical consistency in requirements and outcomes, predictability and policy awareness of the consequences that national requirements may have for international carriage by air.

4. **CONSIDERATIONS FOR THE DEVELOPMENT OF ICAO GUIDANCE**

4.1 IATA supports the SSG-DPL recommendation that ICAO compile relevant laws, regulations and best practices from States and relevant regional and international frameworks and use this work as the basis for the guidance document. In developing that guidance, IATA considers that particular attention should be given to the following air transport-specific considerations identified by the SSG-DPL survey.

4.2 **International (i.e. cross-border) data flows:** The guidance should assist States in taking account of the inherently international character of air carriage. Cross-border transfers of passenger data are integral to airline operations and to compliance with, and the ultimate integrity of, governmental requirements. The SSG-DPL has identified significant differences in national conditions governing such transfers, including adequacy requirements, prior authorizations and contractual safeguards. Guidance should assist States in considering how such requirements operate in the specific context of international carriage by air.

4.3 **Interaction between legal obligations:** The guidance should address the interaction between general data protection requirements and air transport-specific or other governmental requirements, including, among other areas, the specific obligations concerning API and PNR data. Particular attention might be given in such guidance to the circumstances in which different applicable legal regimes impose inconsistent requirements concerning the collection, transfer or retention of the same data.

4.4 **Retention:** Divergent retention requirements can create particular difficulties where one applicable regime requires information to be retained while another requires its deletion or restricts its continued retention. These aspects could be addressed in guidance.

4.5 **Regulatory coordination and flexibility:** Guidance could also encourage coordination between relevant national authorities, including those responsible for aviation, border management, security, public health and data protection, particularly where responsibilities or mandates overlap. Guidance could include addressing the issue of flexibility to adapt legal requirements for international carriage by air, as appropriate, and potentially with the use of powers to adopt subsidiary regulations or adaptations below the level of primary legislation as is in place in some States.

4.6 **Practical implementation and evolving technologies:** The guidance should take account of the practical implementation of legal requirements, including the interoperability, data quality, transmission and cybersecurity challenges identified by the survey. It should also anticipate the increasing use of digital identity solutions, including biometric-enabled processes, across the passenger journey. Such

³ See ICAO, *ICAO's Policies on Taxation in the Field of International Air Transport, Doc 8632*; ICAO, *ICAO's Policies on Charges for Airports and Air Navigation Services, Doc 9082*; and ICAO, *Policy and Guidance Material on the Economic Regulation of International Air Transport, Doc 9587*.

developments bring into particular focus questions concerning the collection and processing of personal data, cross-border data transfers and interoperability between systems and legal frameworks. The guidance should therefore be sufficiently adaptable to remain relevant as technologies and regulatory approaches evolve, including in relation to digital identity, biometrics, AI-driven risk assessment and profiling, and increasingly complex cross-border data sharing.

4.7 Guidance would provide States with air transport-specific considerations, relevant best practices and practical reference points when developing or adapting national frameworks. This would help promote greater practical consistency and predictability in outcomes while respecting appropriate data protection safeguards and States' responsibility for their national laws and policies.

4.8 IATA stands ready to continue contributing industry expertise and practical operational experience to this work, including by facilitating engagement with air carriers and other relevant stakeholders as appropriate. Industry participation may assist in ensuring that the guidance reflects the practical circumstances in which data is collected, processed, retained and transferred in international air transport.

5. ACTION BY THE COMMITTEE

5.1 The Legal Committee is invited to:

- a) note the views expressed in this Working Paper;
- b) endorse the conclusions and recommended actions of the SSG-DPL contained in the Appendix to Working Paper LC/40-WP/2-2, including the development by ICAO of guidance material based on relevant laws, regulations and best practices;
- c) support the development of such guidance with a view to promoting greater practical consistency and predictability in the application of data protection frameworks to international carriage by air; and
- d) invite ICAO to take into account, in developing the guidance, the international air transport-specific considerations identified in Section 4 of this Working Paper.

— END —