International Civil Aviation Organization

WORKING PAPER

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LEGAL COMMITTEE – 40th SESSION

(Montréal, 26 to 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 Secretariat)

1. BACKGROUND

1.1 At its 39th Session (Montréal, 25 to 28 June 2024), the Legal Committee considered the working paper titled *International carriage by air and data protection laws* (LC/39-WP/6-3) presented by IATA, and decided to request the Council to include the Item "International carriage by air and data protections laws" as a new Item 7 to the Work Programme of the Legal Committee. The Council, at the sixth meeting of its 233rd Session held on 4 November 2024, approved the revised General Work Programme of the Legal Committee and agreed to include this item in the Work Programme (C-DEC233/6). In doing so, the Council further agreed that with respect to this item, a group should be established, with a view to proposing ways to facilitate understanding and awareness among Member States and advancing the work in this area, taking into consideration that the matter goes beyond the air transport sector and that the establishment of data protection laws and policies remain within the responsibilities of States.

1.2 The Secretariat Study Group on Interactions between International Air Carriage and Data Protection Laws (SSG-DPL) was established in May 2025, following a State letter (IND/25/2) dated 25 March 2025 setting out the Terms of Reference of the SSG-DPL and seeking nominations of experts by the selected States based on adequate geographical representation and international organizations invited to constitute the Study Group. Coordination with the Facilitation Panel (FALP) including collaboration with the PNR Task Force of FALP, is ensured.

1.3 Experts from 18 Member States (Brazil, Canada, Chile, China, Colombia, the Dominican Republic, France, Japan, Kenya, Saudi Arabia, Singapore, South Africa, Spain, Tanzania, Türkiye, United Arab Emirates, United Kingdom and United States) as well as 4 international organization (Airports Council International, International Air Transport Association, International Federation of Air Line Pilot`s Associations and the European Union) participated in one or more of the meetings of the Study Group.

1.4 The SSG-DPL met four times: First Meeting, Montréal, 5 to 6 June 2025; Second Meeting, Hybrid, Montréal, 23 September 2025; Third Meeting, Virtual, 14 January 2026; Fourth Meeting, Hybrid, 10 to 11 March 2026

1.5 During its first meeting, the SSG-DPL agreed to launch a targeted legal survey of Member States and industry to map all types of data collected, processed, retained and transferred under national laws. The aim of the survey is to collect more information according to the Terms of Reference of the study group to identifying the main challenges. The survey questionnaire was issued through a State Letter (LE 4/77-25/82) dated 27 August 2025.

1.6 A total of 95 responses has been received by January 2026. Detailed analysis of the responses has been presented and discussed during the fourth meeting of the SSG-DPL. The key conclusions and recommended actions, as agreed by the SSG-DPL, are presented in the **Appendix** to this working paper.

2. ACTION BY THE COMMITTEE

The Legal Committee is invited to:

a) consider the information provided in this working paper including the key conclusions on the outcome of the legal survey presented in its **Appendix**; and

b) endorse the recommended actions presented in the **Appendix**.

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APPENDIX

KEY CONCUSIONS ON THE OUTCOME OF THE LEGAL SURVEY ON DATA PROTECTION LAWS IN INTERNATIOAL AIR CARRIAGE AND RECOMMENDED ACTIONS IDENTIFIED BY SSG-DPL

1. KEY CONCLUSIONS

1.1 The survey results demonstrate that **data protection and privacy considerations are now firmly embedded in the regulatory landscape of international air carriage**, with the vast majority of responding States having established both aviation-specific and general data protection frameworks governing the collection, processing, retention, and transfer of passenger data.

1.2 At the same time, the analysis reveals a **high degree of fragmentation and divergence across national legal systems**. While common elements exist—such as requirements for legal basis, data transfer safeguards, and enforcement mechanisms, the **scope, structure, and implementation of these rules vary significantly between jurisdictions**, particularly in relation to data retention periods, cross-border transfer requirements, and institutional responsibilities.

1.3 **International air carriage operates at the intersection of multiple, and sometimes competing, legal regimes**, notably aviation security, border control, public health and data protection laws. In most States, general data protection legislation applies (directly or subsidiarily) to aviation-related data processing. However, **sector-specific requirements—especially those related to API and PNR data—may prevail or create exceptions**, leading to legal complexity and potential conflicts of obligations for stakeholders.

1.4 **Cross-border data flows are essential to the functioning of international air transport**, yet they are subject to **increasingly stringent and heterogeneous legal conditions**, including adequacy requirements, prior authorizations, and contractual safeguards. These differences contribute to **operational challenges, legal uncertainty, compliance risks, and increased implementation complexity,** particularly for air carriers operating across multiple jurisdictions.

1.5 From an institutional perspective, while many States have established **enforcement mechanisms and coordination frameworks**, responsibilities are often **shared (domestically) across multiple authorities**, which may result in overlapping mandates and inconsistent interpretation or application of rules. Although a majority of States report some level of coordination, **gaps remain**, especially in jurisdictions where no formal mechanisms exist.

1.6 The implementation of data-related requirements presents **practical and technical challenges**. These include system interoperability issues, data quality and transmission problems, cybersecurity risks, and limited awareness among stakeholders. Notably, many of these challenges are directly linked to the **lack of harmonization and interoperability between legal regimes and technical standards**.

1.7 **Regional and international cooperation mechanisms play an important and increasingly recognized role** in addressing these challenges. A majority of responding States participate in or align with **regional or global data governance frameworks**, including multilateral legal instruments, regional data protection regimes, and international cooperation platforms. These mechanisms contribute to **promoting common principles, facilitating predictable cross-border data exchanges and enhancing**

regulatory convergence. However, their **scope, legal effect, and level of implementation vary considerably across regions**, and participation is not universal. As a result, while such initiatives provide valuable foundations, they **do not yet fully mitigate the fragmentation of legal frameworks or eliminate inconsistencies in cross-border data governance**.

1.8 The group has recognized the difficulty of having for now a global and international legal framework in respect of data protection specially dedicated to aviation, due to the different existing national or regional legal regimes for data protection.

1.9 Looking ahead, the survey highlights a set of **emerging and evolving challenges**, including the implications of AI-driven risk assessment and profiling, digital identity systems, and the growing complexity of cross-border data sharing. These developments are expected to further **intensify the need for coherent regulatory approaches and international cooperation**.

2. RECOMMENDED ACTIONS

2.1 Recognizing that data protection laws remain within the responsibility of States and extend beyond the aviation sector, ICAO may support the facilitation of international air transport by promoting greater coherence in the application of data-related frameworks. The group considers that awareness could be raised in this regard, particularly for States that do not have specific existing data protection legislation, or plan to amend their existing legislation in the future and may benefit from guidance.

2.2 Accordingly, it is recommended that ICAO:

a) **Encourage States to take into consideration the dynamics of international civil aviation in the development and implementation of other national legislations on data protection;**

b) **Compile information on laws, regulations and best practices from States and relevant regional and international frameworks concerning the collection, processing, retention, and transfer of data and/or personal information in international air transport;**

c) **Develop non-binding guidance material, based on these best practices, for the consideration of States in the development or adaptation of their national legislation, with a view to facilitating secure and efficient international air transport while ensuring appropriate data protection safeguards; and**

d) **Monitor developments related to data governance in international air transport, including emerging technologies and regulatory approaches.**

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