



International Civil Aviation Organization

WORKING PAPER

A41-WP/143¹
EX/60
1/8/22

ASSEMBLY — 41ST SESSION

EXECUTIVE COMMITTEE

Agenda Item 13: Facilitation Programmes

INTERNATIONAL AIR TRANSPORT AND PASSENGER DATA PROTECTION

(Presented by China)

EXECUTIVE SUMMARY

This paper outlines the importance of the orderly flow and protection of personal data of international air passengers to the efficiency and convenience of international civil aviation and points out that the orderly flow and protection are affected by different laws and regulations on personal data in various States. It also introduces how China balances legal regulation and the transnational flow of data.

The coordination of national legislative rules on data in the field of civil aviation is essential for the recovery and orderly growth of international air transport, and International Civil Aviation Organization (ICAO) can provide important guidance and assistance.

Action: The Assembly is invited to approve actions recommended in Section 4.

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| <i>Strategic Objectives:</i> | This working paper relates to Strategic Objective <i>Security & Facilitation</i> |
| <i>Financial implications:</i> | The activities referred to in this paper will be undertaken with resources available in the 2022–2025 Regular Programme Budget. |
| <i>References:</i> | Annex 9 — <i>Facilitation</i> <i>General Agreement on Trade in Services (GATS)</i> of GATT in 1994 |

¹ English and Chinese versions provided by China.

1. INTRODUCTION

1.1 States around the world continue to strengthen legislation and regulation on the protection of personal information. The generation, collection, utilization and transfer of personal data of international air passengers are also affected by the laws and regulations of different States. Legislative differences between the States lead to different levels of protection of personal data of passengers.

1.2 The cross-border utilization of personal data of passengers is necessary for international air transport. The different laws and regulations on passenger data among States will pose potential obstacles, affecting the efficiency and convenience of international air transportation and maybe leading to disputes and lawsuits against airlines.

1.3 As COVID-19 rages across the world, States may request visitors to provide other information in addition to the information listed in Annex 9 — *Facilitation*, including basic information such as names, dates of birth and additional information required by different States. Information on the biological health of passengers may also be required. In the meanwhile, technological improvement for the purposes of facilitating international travel may also require travelers to provide more personal data.

1.4 In order to promote the recovery of international travel and aviation industry, airlines and data service providers need to further consider keeping the balance between meeting States' requirements of data protection and the costs for data protection, which requires coordination of legislation on data protection among States. ICAO should make its due contribution in this regard.

2. DISCUSSION

2.1 Possible impact of data protection legislation of contracting States on international civil aviation transport

2.1.1 For the purposes of this paper, we use some of the terms in *General Agreement on Trade in Services* (GATS) of GATT in 1994, which include the term of Computer Reservation System (CRS) service.

2.1.2 The purpose is to explore the possible influence of the domestic legislation on data protection of the Member States on international civil aviation transport.

2.1.3 Parties ranging from CRS service providers responsible for ticket reservation to airlines offering transport services will face domestic legislation on data protection in different States, such as the State where a passenger originates from, his stopover/transit state and the destination state. Yet the cross-border transfer of data is necessary for international travel.

2.1.4 Such measures will incur additional costs for data transmission and compliance. Airlines need to adjust their data protection strategies to meet the requirements of domestic legislation on data protection in different states. This cost, however, has not been reflected on the basis of the original international air transport framework.

2.1.5 The COVID-19 and technological development have required higher standards for cross-state and cross-border data flow required by international travel, which overloads airlines, and there is no coordinated approach on this issue among States.

2.2 **Data protection and air transport facilitation practices in China**

2.2.1 China believes that the use and protection of a passenger's personal data should be an integral part of travel facilitation.

2.2.2 China's legislation on data protection protects the security of personal information in an overall way. For example, the Cybersecurity Law and the Data Security Law protect personal information from abuse, and the Personal Information Protection Law stipulates the legal obligations that need to be fulfilled when personal information is provided to parties abroad. These laws and regulations offer requirements and guidelines on information protection to CRS service providers and airlines.

2.2.3 Article 76 (5) of the Cybersecurity Law defines personal information. Articles 5 to 9 of the Personal Information Protection Law state the principles for dealing with personal information: explicit and reasonable purposes; the minimum scope and necessity; principles of openness and transparency; and complete and accurate information. Article 13 of the Personal Information Protection Law states the prerequisite for processing personal information and Article 29 stipulates that the processing of sensitive personal information shall obtain the individual's separate consent.

2.2.4 As for some domestic and overseas CRS service providers and airlines, the collection, utilization and outbound transfer of sensitive personal information need to comply with China's requirements for data protection and cross-border transfer and to obtain individual's separate consent.

2.2.5 China's local CRS service providers transfer data across borders by establishing standards and equipment for personal data protection and conducting safety assessments in accordance with the relevant laws and regulations. This practice provides a higher level of personal data protection to passengers in international air transport on the premise of meeting Chinese laws.

2.3 **Coordination of international regulation**

2.3.1 The protection and facilitation of a passenger's personal data requires mutual efforts among states, and the compatibility of rules and standards among states can guide the cross-border data transfer necessary for the normal operation of the international air transport industry.

2.3.2 Based on the coordination among States, ICAO may achieve globally consistent legal practice through the formulation of international conventions or standards and recommended practices that meet the cross-border flow of data of international civil aviation passengers, which is an important step in the orderly and healthy development and the cost reduction of international air transport.

3. **CONCLUSION**

3.1 While protecting the security and privacy of passenger data, different States should take the initiative to reduce and control the airlines' costs for recovering from the pandemic by coordinating various national actions, thereby promoting the recovery and development of international air transport.

4. **ACTION**

4.1 The Assembly is invited to:

- a) require the Secretariat to consider the coordination between international air transport and passenger data protection, taking into account the fact that States shall jointly specify data protection benchmarks and the aim of improving the compatibility of regulatory measures; and
- b) require the Secretariat to establish a task force for passenger data protection to further study the issue and to develop guidance materials.

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