



Agenda Item 8A: Other Matters

DATA PROTECTION & INTERNATIONAL CARRIAGE BY AIR – OUTCOMES FROM THE 39TH SESSION OF THE ICAO LEGAL COMMITTEE & SUBSEQUENT COUNCIL DECISION

(Presented by the International Air Transport Association)

SUMMARY	
<p>IATA presented Working Paper (LC/WP6-3) to the 39th Session of the ICAO Legal Committee proposing that the interaction of national personal data protection and privacy laws and international carriage by air be included on its work plan. The Council supported this proposal which was approved during its 233rd Session on 4 November 2024. A multi-disciplinary group will be established to investigate the issues, identify possible mitigations and to develop aviation-informed guidance for States. This paper urges Latin American States to nominate participants once the multi-disciplinary group is constituted by ICAO to ensure regional input and representation.</p>	
References:	
- None	
ICAO Strategic Objectives:	

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. However, data protection laws were not devised with the unique operational and regulatory characteristics of international civil aviation in mind. Such laws differ as to their substantive requirements, often conflict with each other and frequently apply outside the territory of the regulating State.

1.3 Save for some limited maritime activity (i.e. cruising and ferry services) and rail transport, aviation is unique in physically transporting passengers from one jurisdiction to another. This requires passengers' personal data to be shared this 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 Air carriers do not to seek to be exempted from data protection laws nor do they challenge the sovereign policy prerogative of governments to introduce such laws. 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 also 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 beyond facilitation concepts. For this reason, IATA believes the 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 via means of a dedicated multi-disciplinary group. This will help avoid future issues and ensure that no States are left behind.

2. DISCUSSION

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

2.2 Most recently IATA, in Working Paper WP/6-3³ to the 39th ICAO Legal Committee in April 2024, 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. It is envisaged that group will consist of privacy and legal experts, facilitation specialists, international organizations (particularly those involved in initiatives that promote greater interoperability and consistency between national data protection laws) and others.

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, including several from Latin America, spoke in support of the proposal during LC/39 as reflected in the Draft Report⁵ of the Legal Committee.

2.5 The outcomes from the Legal Committee were approved by the Council at its 233rd Session in early November 2024. ICAO is yet to constitute the multidisciplinary group, but it is essential that it has representation from all regions including Latin America.⁶

3. CONCLUSION

1.8 The Conference is invited to:

- a) Note the information provided in this Paper
- b) Propose qualified candidates to participate in the ICAO Legal Committee multi-disciplinary group on data protection and international carriage by air when nominations are requested by

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

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

⁶ See <https://www.icao.int/about-icao/Council/Council%20Documentation/233/C-DEC/06/C.233.DEC.06.EN.pdf>

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