



## DIRECTORS GENERAL OF CIVIL AVIATION-MIDDLE EAST REGION

### Seventh Meeting (DGCA-MID/7) (Riyadh, Saudi Arabia, 19 – 20 May 2024)

#### Agenda Item 5: Aviation Security and Facilitation

#### CREATION OF A MULTI-DISCIPLINARY GROUP UNDER THE ICAO LEGAL COMMITTEE TO REVIEW THE INTERACTION BETWEEN NATIONAL DATA PROTECTION LAWS AND INTERNATIONAL CARRIAGE BY AIR

*(Presented by the International Air Transport Association (IATA))*

##### SUMMARY

International aviation connectivity depends on data connectivity. Protecting the personal information that is required to support the physical transportation of passengers across jurisdictions is critical and airlines are committed to complying with national data protection laws. However, there is consensus that a growing patchwork of national data protection laws not designed with the unique regulatory and operating characteristics of international civil aviation in mind is having unintended consequences for travelers, States and airlines. There is growing consensus among stakeholders that ICAO should now study the issue in more detail. This paper requests the support of States in the Middle East region for IATA's working paper that will be submitted to the forthcoming 39<sup>th</sup> Session of the ICAO Legal Committee (taking place in Montreal from 25-28 June 2024).

##### REFERENCES

- ICAO Legal Committee 38<sup>th</sup> Session (2022) - IATA [Working Paper LC/39-WP7-1](#)
- ICAO 41<sup>st</sup> Assembly (2022) – IATA [Working Paper A41-WP/73 Revision 1 ICAO Doc 10183 Executive Committee Report](#) of the 41<sup>st</sup> Assembly, Paragraph 13.26 (2022)
- ICAO 13<sup>th</sup> Facilitation Panel (2024) – IATA [Working Paper FALP-13-WP/32](#)

#### 1.1 INTRODUCTION

1.1 Aviation connects the world. In the next 24 hours, over 12 million passengers will fly on over 128,000 flights between 21,000 different city-pairs across the globe.<sup>1</sup> This air connectivity relies on data connectivity.

1.2 To facilitate the safe and secure transport of passengers between different jurisdictions, air carriers must securely collect, process and share certain personal information of their customers with

<sup>1</sup>Aviation benefits beyond borders. See: [https://aviationbenefits.org/media/167517/aw-oct-final-atag\\_abb-2020-publication-digital.pdf](https://aviationbenefits.org/media/167517/aw-oct-final-atag_abb-2020-publication-digital.pdf)

partners in the aviation value chain, including other airlines, airports, ground handlers, travel agents, and border control authorities. This must be done in strict compliance with national data protection laws.

## 2. DISCUSSION

2.1 Today around 70% of ICAO Member States have implemented data protection laws. However, these have not been developed with consideration of the special operating and regulatory characteristics of international civil aviation in mind. They also differ substantially as to their requirements, often conflict, and may apply outside the territory of the regulating State.

2.2 The growing differences among national data protection laws and their extraterritorial application is making it increasingly difficult for airlines to determine which legislation applies to an individual passenger's travel itinerary. This makes compliance hugely complex and challenging.

2.3 In addition, airlines are finding themselves increasingly caught in legal conflicts between States relating to data protection legislation. These issues are described in IATA working paper FALP/13-WP/32 to the 13th Session of the ICAO Facilitation Panel in February 2024. IATA expects to see more frequent issues as States implement formal Passenger Name Record (PNR) programs in line with ICAO SARPs in Annex 9 – *Facilitation*. If left unaddressed these issues may adversely affect the orderly and harmonious development of international civil aviation.

2.4 IATA recently sought to raise awareness among States regarding the interaction of data protection laws and international carriage by air and the impacts on different stakeholders. For example, WP/7 was presented to the 38th Session of the ICAO Legal Committee in March 2022. WP/73 Revision 1 was presented to the 41st ICAO Assembly in late 2022. The Report of the Assembly (Executive Committee, Doc 10138), paragraph 13.26 noted that “Many delegates agreed that complex conflict of laws and legal compliance issues are broader than the provisions of Annex 9 — *Facilitation* and would need to be addressed. Following discussions, the Committee agreed that the actions presented in the Executive Summary of the paper should be considered and assessed by the relevant ICAO Panels and working groups”.

2.5 In February 2023, IATA presented additional information on the subject during an informal briefing to the ICAO Council. Council members made the excellent suggestion to hold an event to discuss the issue in more detail.

2.6 In line with this suggestion, and to enable further discussion regarding data protection aspects specific to civil aviation, IATA organized the *Data Protection & International Carriage by Air Seminar* in cooperation with ICAO that took place in Montreal, 27 to 28 September 2023. There was consensus that there are complex issues that ICAO should study in more detail.

2.7 IATA proposed that a multi-disciplinary group consisting of legal and data protection experts, civil aviation regulators, facilitation experts, industry, and relevant international organizations be established under the auspices of the ICAO Legal Committee to:

- Develop high level reference material to help data protection regulators better understand the specificities of international civil aviation that they can refer to when developing or amending data protection laws and regulations.
- Identify recommendations for further work by ICAO, such as participation in multi-lateral initiatives (e.g., on data transfers) that are underway.
- Provide inputs as to further work that may be needed to review existing ICAO Annexes/SARPs to ensure that they reflect data privacy/protection requirements.

2.8 In subsequent correspondence to IATA on 31 October 2023, the President of the ICAO Council acknowledged that sufficient progress had been made in identifying where convergence and differences exist such that ICAO is in a better position to study the issue in more detail.

2.9 Given that the issues relating to the interaction of international civil aviation and data protection laws are becoming increasingly urgent and that they are both complex and of a legal nature, IATA is submitting a working paper to the 39<sup>th</sup> Session of the ICAO Legal Committee taking place in Montreal between 25-28 June, requesting that the Committee asks the Council to approve the creation of the multi-disciplinary group referred to in 2.7 under the Legal Committee at the earliest opportunity.

### **3. ACTION BY THE MEETING**

3.1 The meeting is invited to:

- a) note the information contained in this paper;
- b) urge representatives of States from the Middle East Region attending the 39<sup>th</sup> Session of the ICAO Legal Committee to consider supporting the proposal for establishing a multi-disciplinary group as outlined in 2.7; and
- c) consider expert representatives from the Middle East region that States may wish to propose to participate in the multi-disciplinary group when it is constituted by ICAO.