

Data Protection and International Carriage by Air

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Air connectivity depends on data connectivity...

Data sent by airlines to governments

- Advanced Passenger Information
- Passenger Name Records
- Health Data (notably during Covid)

Other data sent by airlines

- to other airlines (interline/codeshare bookings)
- to/from travel agents
- to ground handlers and others involved in services
- to airport authorities (e.g. for disabled pax services)

Special Characteristics

- International data transfers are **essential** to the physical transport and to services provided.
- **Complex** travel itineraries through different booking methods (both same carrier and through interline/codeshare).
- States require transfer of data in accordance with **international obligations and ICAO SARPS**
- Airline is a **single entity** operating in all states (a requirement under ASAs) - not separate legal entities in each state .
- Booking process requires **single database** not split between locations.



71%

COUNTRIES WITH
LEGISLATION

9%

COUNTRIES WITH
DRAFT LEGISLATION

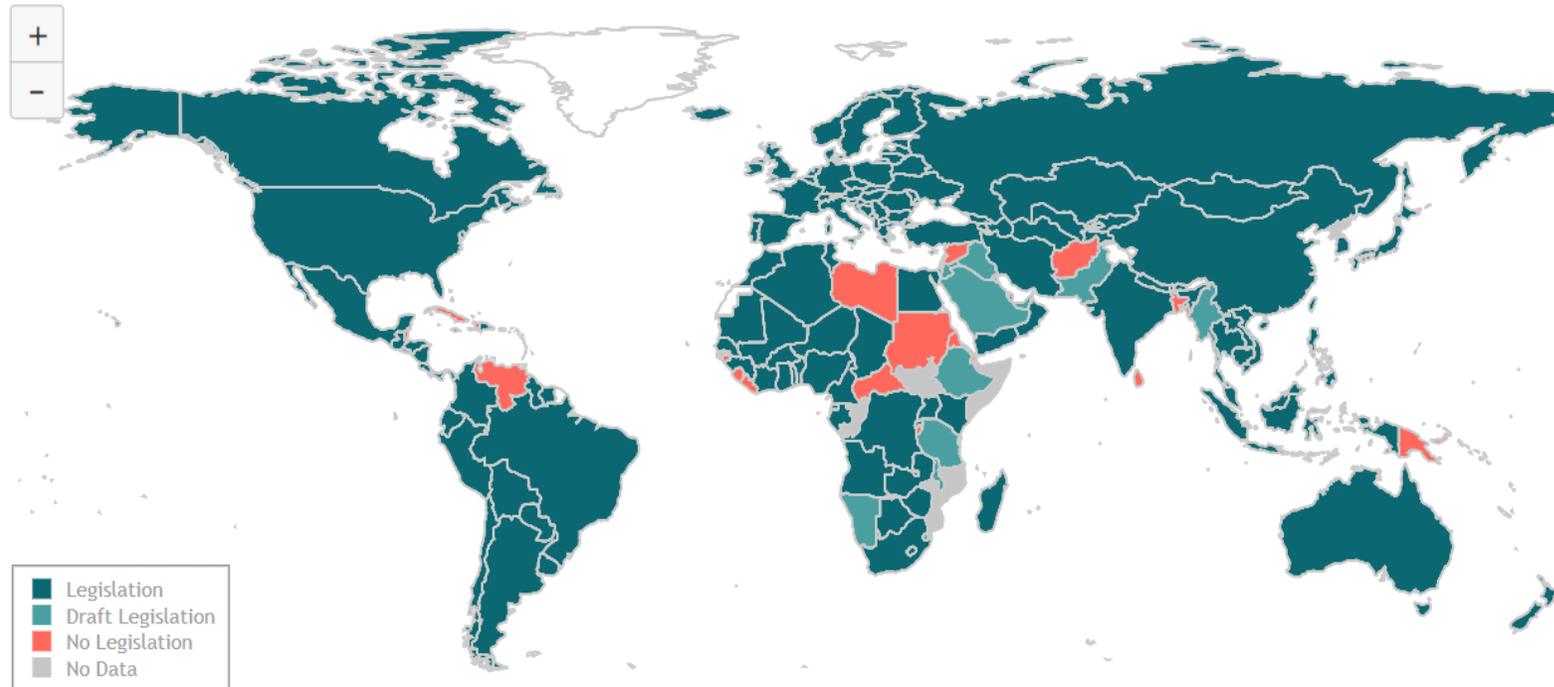
15%

COUNTRIES WITH
NO LEGISLATION

5%

COUNTRIES WITH
NO DATA

Data Protection and Privacy Legislation Worldwide



Source: UNCTAD, 14/12/2021

The issue

1. Data protection laws **apply** in almost every state.
2. National or regional data protection laws are **inconsistent** with each other.
 - For example, the EU GDPR is not entirely consistent with Canada's PIPPL notably around the concept of "legitimate interests" that does not exist under Chinese laws and therefore cannot be used where there is a China nexus).
 - Consequently, at an operational level, this conflict would necessitate airlines to, for example, furnish booking data as mandated by local law by the State, while concurrently facing the risk of contravening their GDPR obligations.
3. Data protection laws increasingly require an assessment of the "**adequacy**" of other states.

To date, when developing/amending national data protection laws, there has been no recognition of the special characteristics or guidance on how these should be applied to international aviation.

Example - which data protection laws apply?



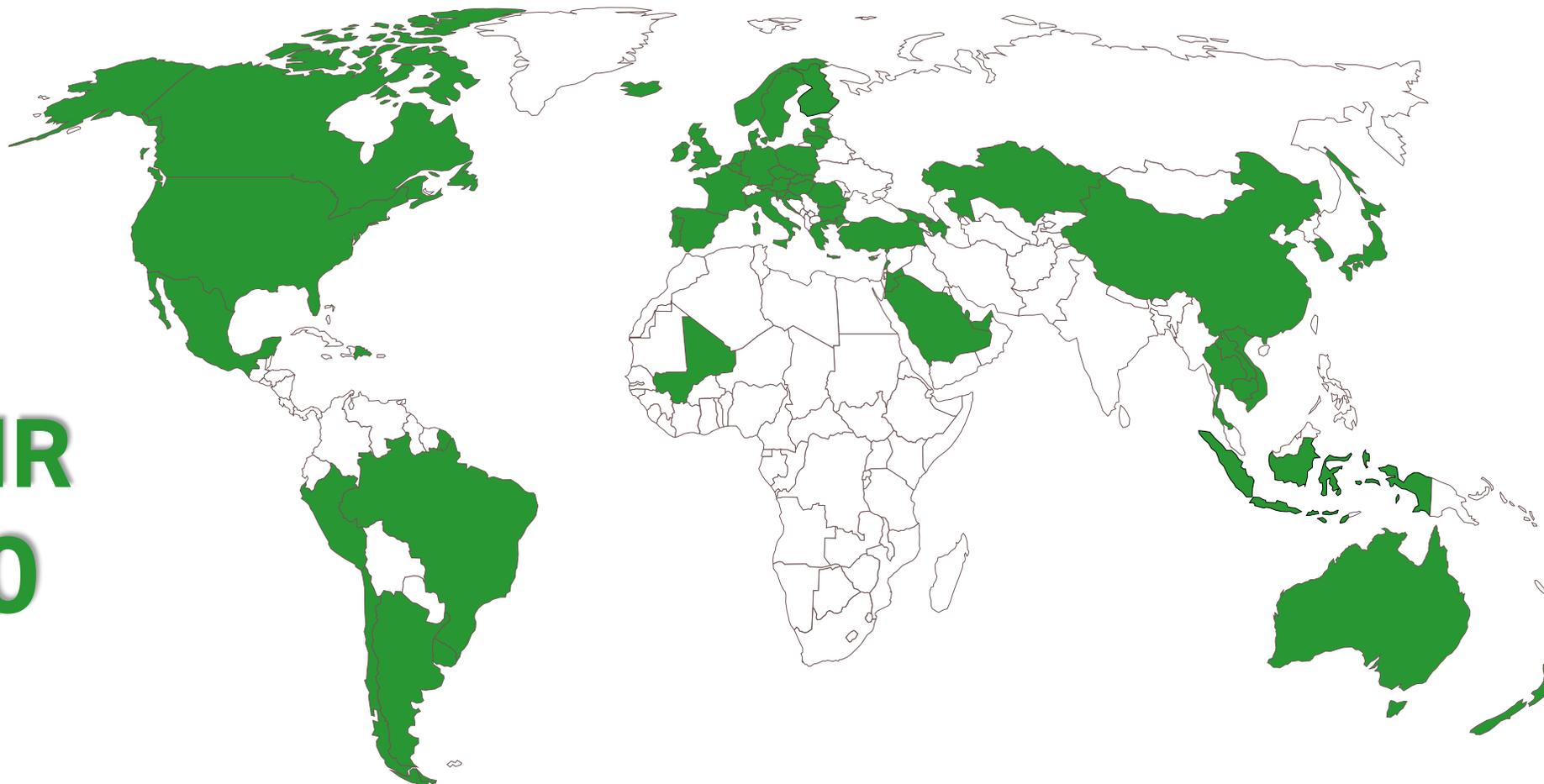
Conflicting “legal basis” for processing

Considerations

- Sensitive personal information processed in multiple jurisdictions
- “Legal basis for processing” – different concepts in different jurisdictions

Global PNR Implementation Status

**PNR
70**



Legend

 PNR in Force (total: 70)

Source: IATA API PNR World Tracker

PNR Data: Implications for Airlines

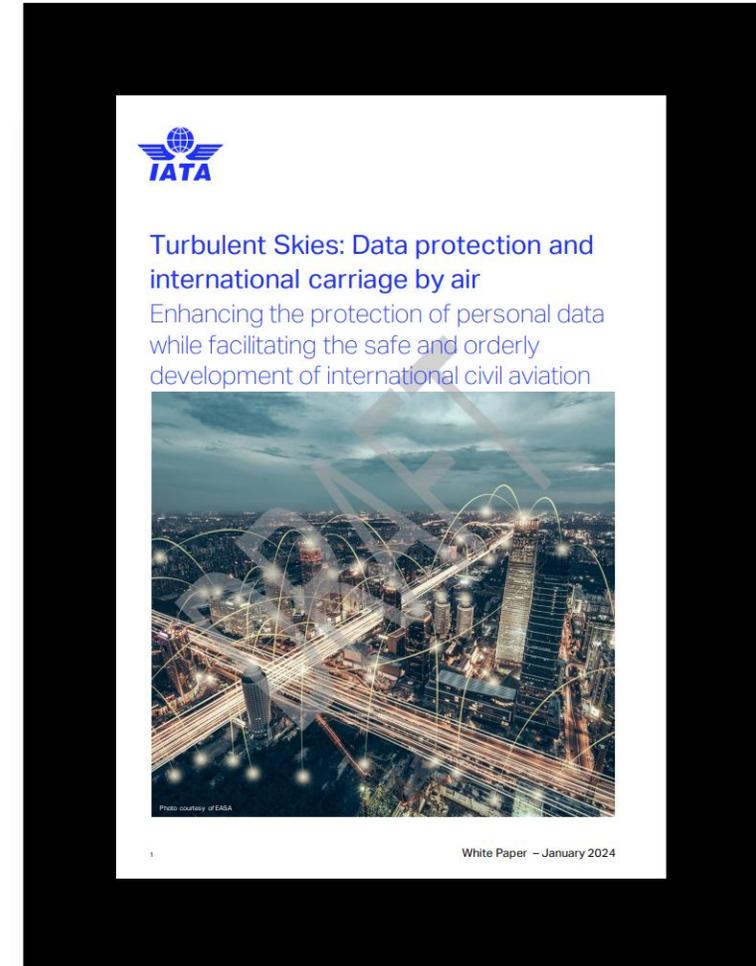
Complexity of patchwork of national laws creates compliance issues.

This puts airlines at significant risk:

- Financial penalties for non-compliance are huge and are enforced – e.g. EU GDPR – 4% of global turnover or 20million Euro (whichever is higher).
- Some airlines are already facing financial penalties, removal of operating approvals and even threats of imprisonment of flight crew for non-provision of PNR data.
- Reputational impact.

If left “as is” the situation could impact future connectivity.

An important role for ICAO...



Current reality and way forward



The issues are complex and there are no “quick-fix” multilateral solutions



Countries will need to engage through ICAO and other multilateral initiatives (e.g., OECD, G7, etc.) to take steps to create greater alignment and interoperability between national laws (medium-term)



ICAO multi-disciplinary group to assess where it may be able to develop solutions or where it may be able to influence and develop high level guidance (similar to RPAS group)



Guidance useful to increase awareness of aviation’s operational and regulatory specificities when States develop, revise or benchmark data protection



This will lead to better protection of personal data, better compliance while enabling the continued development of international air connectivity

ICAO Multi-Disciplinary Group

- What will this achieve?
 - Data protection/privacy, legal and facilitation experts from ICAO, member States, industry and international organizations
 - Develop high level guidance and reference material to help data protection regulators better understand the specificities of international civil aviation that they can refer to when developing or amending laws and regulations.
 - Identify recommendations for further work by ICAO, such as participation in multi-lateral initiatives underway
 - Provide inputs as to further work that may be needed to review existing ICAO documents and materials to ensure that they reflect data privacy/protection requirements.

Thank you!

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