



Comments on Draft Measures on Security Assessment of Cross-border Data Transfer 数据出境安全评估办法征求意见

IATA 国际航空运输协会

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Attention: Cyberspace Administration of China (shujuju@cac.gov.cn)

至：国家互联网信息办公室（电子信箱：shujuju@cac.gov.cn）

Re: Comments on CAC's Draft Measures on Security Assessment of Cross-border Data Transfer (issued on October 29, 2021)

关于：数据出境安全评估办法征求意见（2021 年 10 月 29 日发布）

The International Air Transport Association (IATA) is the trade association for the world's airlines, representing some 290 airlines or 82% of total air traffic. We support many areas of aviation activity and help formulate industry policy on critical aviation issues. In China, together with Chinese member airlines, IATA actively and broadly participates in and help with the stable and sound development of the aviation market. We highly value and appreciate the chance of CAC publishing the Draft for public comments.

国际航空运输协会（国际航协）是由全球 290 多家航空公司所组成的行业协会组织，代表了约 82% 的世界航空运输量。我们在很多领域支持航空运输活动，并帮助在一些重要的航空问题上形成全球航空运输产业政策与行业标准。在中国，国际航协与中国会员航空公司一道广泛地参与和推进中国航空运输市场的稳定、健康和快速发展。我们高度重视并感谢国家网信办发布本办法草案以征求公众意见的机会。

With reference to the subject matter, on July 12, 2019, IATA submitted a letter to the CAC (attached), expounding the position of airlines industry on cross-border data transfer with some comments on the previous draft *Measures on Security Assessment of Cross-border Transfer of Personal Information*. In the following comments IATA addresses specific articles, mainly focusing on the definition/scope of "cross-border data transfer" and data volume threshold aspects.

就此事项而言，于 2019 年 7 月 12 日，国际航协向国家网信办提交了一封信函（附后），阐述了航空业对跨境数据传输的立场，并对此前发布的《个人信息出境安全评估办法》草案提出了一些意见。此次，国际航协将针对本办法征求意见稿的具体条款，尤其是对“跨境数据传输”的定义/范围和安全评估的数据量标准，发表以下意见，请考虑。

1. Article 2

Data handlers that provide abroad important data that was collected or produced through operations within the (mainland) territory of the People's Republic of China, or personal information where a security assessment shall be conducted according to the law, shall conduct a security assessment according to the provisions of these Measures; where laws or administrative regulations provide otherwise, those provisions are to be followed.

第二条 数据处理者向境外提供在中华人民共和国境内运营中收集和产生的重要数据和依法应当进行安全评估的个人信息，应当按照本办法的规定进行安全评估；法律、行政法规另有规定的，依照其规定。

IATA Comments: IATA appreciates the clarification of the concept and scope of "data handler" in this article. We ask that CAC clarify that the Draft Measures apply to data transferred from a business operating in China to another business operating outside of China only and that they:

IATA 评论: 希望进一步澄清本条规定之“数据处理者”的概念和范围。我们建议网信办予以明确：本《办法》仅适用于从在中国经营的企业向另一家在中国境外经营的企业传输的数据，并且：

- a. Do not apply to transfers of information from an individual living in China direct to a business operating outside of China (this is consistent with the notion of cross-border transfer under Chapter V of GDPR, as recently confirmed by the European Data Protection Board). 不适用于居住在中国的个人直接向在中国境外经营的企业传输信息（这与欧洲《通用数据保护条例（GDPR）》第五章跨境传输的理念保持一致，这一点也被欧洲数据保护委员会所确认）。
- b. Do not apply to transfers of information from a business operating in China to the same business also operating outside China (this is consistent with the notion of cross-border transfer under Chapter V of GDPR, as recently confirmed by the European Data Protection Board). 不适用于在中国经营的企业与在中国境外经营的同一企业为提供客户要求的服务所必需的信息转移（这与欧洲《通用数据保护条例（GDPR）》第五章跨境传输的理念保持一致，这一点也被欧洲数据保护委员会所确认）。

2. Article 4

Data handlers providing data abroad shall, in any of the following circumstances, apply for outbound data transfer security assessment with the State cybersecurity and informatization department through their local provincial-level cybersecurity and informatization department.

- 1) *Personal information and important data collected and produced by critical information infrastructure operators;*
- 2) *Where the data transferred abroad contains important data;*
- 3) *Personal information handlers handling the personal information of over 1 million people providing personal information abroad;*
- 4) *Cumulative provision abroad of the personal information of more than 100,000 people or the sensitive personal information of more than 10,000 people;*
- 5) *Other circumstances where the State cybersecurity and informatization department provides data export security assessment must be applied for.*

第四条 数据处理者向境外提供数据，符合以下情形之一的，应当通过所在地省级网信部门向国家网信部门申报数据出境安全评估。

- (一) 关键信息基础设施的运营者收集和产生的个人信息和重要数据；
- (二) 出境数据中包含重要数据；
- (三) 处理个人信息达到一百万人的个人信息处理者向境外提供个人信息；
- (四) 累计向境外提供超过十万人以上个人信息或者一万人以上敏感个人信息；
- (五) 国家网信部门规定的其他需要申报数据出境安全评估的情形。

IATA Comments: IATA 评论

(1) Clarifications

澄清

IATA appreciates the clarification that the thresholds under Article 4 should be understood as being:

- a. A per application threshold and not assessed for each organisation.
- b. Annual thresholds in each case.
- c. Based on the numbers of individuals resident in China whose data is to be transferred out of China.
- d. Clarify what is meant by the reference to "cumulative "in Article 4(4) with a worked example which also deals with a person's details appearing in both data sets (personal information and sensitive personal information).
- e. Clarify the meaning of sensitive data as regards account information and if that relates to bank account details and/or payment card details.
- f. Clarify that partial bank and payment details are out of scope.

国际航协建议做如下澄清，即第四条所规定的一些数量门槛标准应理解为：

- a. 这些门槛是每次申请的数量标准，而不是针对每个组织的总计数量的评估。
- b. 每种情况下均为年度数量标准。
- c. 是根据需要将数据转移出中国且居住在中国的个人数量进行的计算。
- d. 用个工作示例阐明第四条第（四）项中“累计”的含义，以明确个人详细信息两个数据标准（个人信息和敏感个人信息）。
- e. 阐明有关帐户信息的敏感数据的含义，以及是否与银行帐户详细信息和/或支付卡详细信息有关。
- f. 明确仅包含部分银行和付款详细信息应该不属于该适用范围。

(2) Feasible Thresholds for Aviation Industry

对航空业可行的数量标准

When it comes to the air transport industry, these thresholds are extremely low to trigger the stricter restrictive obligations and responsibilities including data localization and cross-border transfer security assessment organized by the CAC. In effect, given that the definition of sensitive personal data includes financial account

information this would capture any bookings where payment has been made directly to the airline or via a travel agent using the airlines as the merchant of record for the payment. In addition, the requirements to collect covid health status information further increases the number of cases in which sensitive personal information has to be transferred. If allowed to remain the threshold for the airline industry, such an extremely low threshold could easily capture most of small or medium size air carriers or airport operators, and many international air carriers who do not have substantial flights or operations in China. This will result in a substantial increase in compliance costs, for both smaller Chinese carriers and foreign air carriers offering service to China. These increased operational costs will likely result in increased ticket prices for travel to China, with the potential to reduce worldwide enthusiasm for travel to China and lower Chinese business and tourism revenue as a result.

对于航空运输行业而言，这些数量标准门槛极低，触发了数据本地化以及应由国家网信办组织的跨境传输安全评估等更严格的限制性义务和责任。实际上，鉴于敏感个人数据的定义包括财务帐户信息，这将包括所有的机票订购，因为它们将包括直接向航空公司付款或通过旅行代理人将航空公司作为商户的付款记录。此外，鉴于收集新型冠状病毒毒健康状态信息的要求进一步增加了必须传输敏感个人信息的情形。如果让其作为航空业的数量标准门槛，这样一个极低的门槛，很容易就能包括大部分中小型航空公司或机场运营商，以及许多在中国没有大量航班或运营的国际航空公司。这将导致规模较小的中国航空公司和向中国提供服务的外国航空公司的合规成本大幅增加。这些增加的运营成本可能会导致前往中国的机票价格上涨，从而有可能降低全球对中国旅游的热情，从而降低中国的商业和旅游收入。

It is noted that some countries such as the U.K. properly scale up the volume threshold of passengers taking into account the relatively huge traffic volume for air transport for identifying their critical necessary infrastructure. For example, UK identifies an operator of essential services where the air carrier has: (a) more than 30% of the annual terminal passengers at any UK airport which has annual terminal passenger numbers greater than 10 million; and (b) more than 10 million total annual terminal passengers across all UK airports. This treatment excludes most all foreign air carriers, including at present, all Chinese air carriers that currently have or would seek to establish a UK presence, from being deemed critical infrastructure. Should China adopt a similar threshold, this is likely to be considered when such laws in the UK or other places are adopted or updated and allow IATA to continue arguing that all foreign air carriers (including Chinese air carriers) deserve the benefit of such exclusions as well.

值得注意的是，包括英国在内的一些国家考虑到航空运输相对较大的运输量，适当提高了认定关键必要基础设施的旅客数量门槛。例如，当航空承运人符合以下情形时，英国便确定其为一家基本服务运营人：(a) 在任何英国机场年客运量超过 1000 万的机场，其在所有英国机场的年客运量总计超过全部运输量的 30%；(b) 其在英国所有机场的年客运量总计超过 1000 万人次。这种标准几乎排除了所有的外国航空承运人，包括所有目前已经或将寻求在英国建立业务的中国航空公司，被视为关键基础设施的可能。如果中国采用类似的门槛，英国或其他国家的此类法律在被采用或更新时很可能也会考虑这一点，并允许国际航协继续主张所有外国航空公司（包括中国航空公司）都应该享受这种排除的好处。

Considering that China is one of the most populous countries with the second largest air traffic volume in the world, we suggest that the CAAC and CAC take into account the identification methodology, i.e., by factoring the total annual passengers from China (at least greater than 10 million) and the minimum percentage (more than 30%) of annual traffic at any China airport. In addition, we recommend that there should be no separate threshold based on the number of persons whose data is transferred abroad or for the transfer of sensitive personal information.

考虑到中国是世界上人口最为稠密的国家之一，航空运输量世界第二，我们建议民航局和国家网信办考虑这种类似的关键基础设施识别方法，即考虑其中国的年旅客总数（至少大于 1000 万人）以及其在中国任何机场年客运量的最低百分比（超过 30%）。此外，我们建议不应根据数据出境人数或敏感个人信息的传输设置单独的门槛。

Finally, even where such thresholds are met, the international data transfers need to be allowed to continue pending review and approval by the relevant authorities especially given that the draft legislation proposes a review period of up to 67 working days (a period which is likely in excess of three months).

最后，即使达到了这些门槛，也需要允许国际数据传输继续进行，等待有关局的审查和批准，特别是考虑到立法草案提出了长达 67 个工作日的审查期（这一期限很可能会超过三个月）。

3. Article 12:

Outbound data transfer assessment results are effective for two years. During their period of validity, if one of the following circumstances occurs, data handlers shall re-apply for assessment:

- 1) *The purpose, method, scope, or type of data provided abroad, or the purpose and method of data handling by foreign receiving party change, or the time limit for storage abroad of personal information or important data is extended;*
- 2) *Circumstances that may affect the security of data transferred abroad, such as changes in the legal environment of the country or region where the foreign recipient party is located, changes to the actual control powers of the data handler or the foreign receiving party, changes to the contract between the data handler and the foreign receiving party, etc.;*
- 3) *Other circumstances that may affect the security of data transferred abroad.*

If the validity period expires and it is necessary to continue the original outbound data transfer activities, data handlers shall re-apply for assessment 60 working days before the validity period expires.

Those who fail to re-apply for assessment in accordance with the provisions of this Article shall cease outbound data transfer activities.

第十二条 数据出境评估结果有效期二年。在有效期内出现以下情形之一的，数据处理者应当重新申报评估：

- （一）向境外提供数据的目的、方式、范围、类型和境外接收方处理数据的用途、方式发生变化，或者延长个人信息和重要数据境外保存期限的；
- （二）境外接收方所在国家或者地区法律环境发生变化，数据处理者或者境外接收方实际控制权发生变化，数据处理者与境外接收方合同变更等可能影响出境数据安全的；
- （三）出现影响出境数据安全的其他情形。

有效期届满，需要继续开展原数据出境活动的，数据处理者应当在有效期届满六十个工作日前重新申报评估。

未按本条规定重新申报评估的，应当停止数据出境活动。

IATA Comments: The review should occur not more than every 3 years (not every 2 years) given the time periods to conclude them and the regulator should have the discretion to approve longer review periods.

IATA 评论： 考虑到结束审查的时间段，审查不应超过每 3 年（不是每 2 年）进行一次，并且监管机构应有权酌情批准更长的审查期限。

4. Article 18

These Measures are implemented beginning [month] [day], [year].

第十八条 本办法自 年 月 日起施行。

IATA Comments: There needs to be a transitional period of at least 12 months before the rules apply or else the approval process will stop data transfers completely while they are being reviewed. All applications received in that time should be valid until processed as it can take up to 67 working days to process the request according to the outlined timescales.

IATA 评论: 在本规则适用之前需要有至少 12 个月的过渡期，否则审批流程将在审查期间停止数据传输的完成。在那段时间内收到的所有申请在处理之前都应有效，因为根据所述的时间表处理请求最多可能需要 67 个工作日。